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**TRIAL**

OF

**CHARLES GETTER,**

FOR THE

**MURDER OF HIS WIFE;**

LATE OF FORKS TOWNSHIP,

**NORTHAMPTON COUNTY,**

**AND COMMONWEALTH OF PENNSYLVANIA,**

In the Court of Oyer and Terminer, and General Goal Delivery, held at  
Easton, in and for the County of Northampton, on the third  
Monday of August, Anno Domini, 1833.

CONTAINING

**THE ARGUMENTS OF COUNSEL,  
AT LENGTH.**

—◆—  
REPORTED BY A MEMBER OF THE EASTON BAR.  
—◆—



PHILADELPHIA:  
PRINTED AT ALEXANDER'S GENERAL PRINTING OFFICE,  
ATHENIAN BUILDINGS, FRANKLIN PLACE.

1833.

TRIAL

OF

CHARLES GUTHRIE,

FOR THE

MURDER OF HIS WIFE;

LATE OF FORKS TOWNSHIP,

WASHINGTON COUNTY,

AND COMMONWEALTH OF PENNSYLVANIA,

As the Court of Oyer and Terminer, and General Sessions, held at  
Harrisburg, in and for the County of York, on the third  
Monday of August, Anno Domini, 1882.

CONTAINING

THE ARGUMENTS OF COUNSEL,

AT LENGTH.

REPORTED BY A MEMBER OF THE BAR.

PHILADELPHIA:  
PRINTED AT ALLEN'S GENERAL PRINTING OFFICE,  
ATWATER BUILDING, MARKET PLACE.

1882



## TRIAL OF CHARLES GETTER.

At a Court of Oyer and Terminer and General Gaol Delivery, held at Easton, in and for the County of Northampton, in the Commonwealth of Pennsylvania, August Sessions, A. D. 1833.

Before the Honourable GARRICK MALLERY, President.

Honourable JOHN COOPER,

Honourable DANIEL WAGENER, } Associates.

*Azariah Prior, Esq., Clerk.*

The Court was opened on Monday the 19th of August, A. D. 1833, at 9 o'clock, A. M., and after some preliminary business, the Grand Jurors were empanelled, and charged by the Court upon the subject of their duties. The Court was thereafter occupied with business of minor importance until Friday afternoon, when the Grand Jury brought into Court the following Bill of

### INDICTMENT.

*Northampton County, ss :*

At a Court of Oyer and Terminer and General Gaol Delivery, held at Easton, in and for the County of Northampton, on the third Monday of August, in the year of our Lord, one thousand eight hundred thirty-three—

The Grand Inquest of the Commonwealth of Pennsylvania, inquiring for the Body of the County of Northampton, on their oath and affirmations, respectively do present: That CHARLES GETTER, late of the county aforesaid, Yeoman, not having the fear of God before his eyes, but being moved and seduced by the instigation of the Devil, on the twenty-seventh day of February, in the year of our Lord one thousand eight hundred and thirty-three, with force and arms, &c., at the County of Northampton aforesaid, and within the jurisdiction of this Court, in and upon one REBECCA GETTER, otherwise called MARGARET GETTER, the wife of him the said Charles Getter, in the peace of God and the Commonwealth of Pennsylvania aforesaid, then and there being, feloniously, wilfully, deliberately, premeditatedly, and of his malice aforethought, did make an assault; and that he, the said Charles Getter, with both his hands about the neck and throat of her, the said Rebecca Getter, otherwise called Margaret Getter, then and there feloniously, wilfully, deliberately, premeditatedly, and of his malice aforethought, did fix and fasten, and that he, the said Charles Getter, with both his hands so as aforesaid, fixed and fastened about the neck and throat of her the said Rebecca Getter, otherwise called Margaret Getter, then and there feloniously, wilfully, deliberately, premeditatedly, and of his malice aforethought, did choke and strangle, of which said choking and strangling, of him the said Charles Getter, she the said Rebecca Getter, otherwise called Margaret Getter, then and there instantly died. That the said Charles Getter, her the said Rebecca Getter, otherwise called Margaret Getter, the wife of him the said Charles Getter, in manner and form aforesaid, feloniously, wilfully, deliberately, premeditatedly, and of his malice aforethought, did kill and murder; contrary to the form of the Act of the General Assembly, in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

And the Inquest aforesaid, on their oaths and affirmations aforesaid, do further present, That Charles Getter, late of the county aforesaid, Yeoman, not having the fear of God before his eyes, but being moved and seduced by the instigation of the Devil, on the twenty-seventh day of February, in the year of our Lord one thousand eight hundred and thirty-three, with force and arms, &c., at the County of Northampton, aforesaid, and within the jurisdiction of this Court, in and upon one Rebecca Getter, otherwise called Margaret Getter, the wife of him the said Charles Getter, in the peace of God and the Commonwealth of Pennsylvania, aforesaid, then and there being, feloniously, wilfully, deliberately, premeditatedly, and of his malice aforethought, did make an assault; and that he, the said Charles Getter, with his right hand about the neck and throat of her the said Rebecca Getter, otherwise called Margaret Getter, then and there feloniously, wilfully, deliberately, premeditatedly, and of his malice aforethought, did fix and fasten; and that he, the said Charles Getter, with his right hand so as aforesaid fixed and fastened about the neck and throat of her, the said Rebecca Getter,



otherwise called Margaret Getter, her, the said Rebecca Getter, otherwise called Margaret Getter, then and there feloniously, wilfully, deliberately, premeditatedly, and of his malice aforethought, did choke and strangle, of which said choking and strangling of him, the said Charles Getter, she, the said Rebecca Getter, otherwise called Margaret Getter, then and there instantly died. And so the Inquest, aforesaid, on their oaths and affirmations aforesaid, do say, That the said Charles Getter, her, the said Rebecca Getter, otherwise called Margaret Getter, the wife of him the said Charles Getter, in manner and form aforesaid, feloniously, wilfully, deliberately, premeditatedly, and of his malice aforethought, did kill and murder; contrary to the form of the Act of the General Assembly, in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

And the Inquest aforesaid, on their oaths and affirmations aforesaid, do further present, That Charles Getter, late of the county aforesaid, Yeoman, not having the fear of God before his eyes, but being moved and seduced by the instigation of the Devil, on the twenty-seventh day of February, in the year of our Lord one thousand eight hundred thirty-three, with force and arms, &c., at the County of Northampton, aforesaid, and within the jurisdiction of this Court, in and upon one Rebecca Getter, otherwise called Margaret Getter, the wife of him the said Charles Getter, in the peace of God and the Commonwealth of Pennsylvania, aforesaid, then and there being, feloniously, wilfully, deliberately, premeditatedly, and of his malice aforethought, divers times did strike and beat; and that he, the said Charles Getter, with both his hands in and about the neck and throat of her the said Rebecca Getter, otherwise called Margaret Getter, then and there feloniously, wilfully, deliberately, premeditatedly, and of his malice aforethought, did fix and fasten; and that he, the said Charles Getter, with both his hands, so as last aforesaid fixed and fastened, about the neck and throat of her, the said Rebecca Getter, otherwise called Margaret Getter, then and there did squeeze and press, as well of which striking and beating of her the said Rebecca Getter, otherwise called Margaret Getter, with both the hands of him the said Charles Getter, as also the squeezing and pressing of the neck and throat of her the said Rebecca Getter, otherwise called Margaret Getter, with both the hands of him the said Charles Getter, she, the said Rebecca Getter, otherwise called Margaret Getter, then and there instantly died. And so the Inquest aforesaid, on their oaths and affirmations, do say, That the said Charles Getter, her, the said Rebecca Getter, otherwise called Margaret Getter, the wife of him the said Charles Getter, in manner and form last aforesaid, feloniously, wilfully, deliberately, premeditatedly, and of his malice aforethought, did kill and murder; contrary to the form of the Act of the General Assembly, in such cases made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

ELLIS LEWIS, Attorney General,

A True Bill.—*William Brown*, Foreman.

By H. HEPBURN.

The following named gentlemen appeared as Counsel :

*For the Commonwealth*—HOPEWELL HEPBURN, Deputy Attorney General, ROBERT MAY BROOKE and ALEXANDER E. BROWN, Esquires.

*For the Prisoner*—JAMES MADISON PORTER and EVAN REES, Esquires.

On Saturday afternoon, the prisoner having been arraigned, the Clerk read to him the Indictment, and upon each of the several Counts of the same, asked him, "How say you, Prisoner, guilty, or not guilty?" to each of which he emphatically replied, "Not guilty, sir." The Clerk then asked the prisoner how he would be tried? To which he responded, "By God and my country."

*By the Clerk*.—"May God send you a speedy deliverance."

On the same day, the Court directed the Clerk to proceed in calling the Jurors until the panel should be filled: whereupon, the names of thirty were drawn, eight of whom were challenged peremptorily; ten for cause, having either formed an opinion as to the guilt or innocence of the prisoner, or else declared they were conscientiously scrupulous about rendering a verdict of guilty, where the consequence would be death; and at a quarter before 6 o'clock, P. M. the following named persons were severally sworn or affirmed, to try the issues:

JOHN SCHWARTZ, sworn.

JAMES J. HORNER, affirmed.

JONATHAN DEMUTH, affirmed.

JOHN KLEWELL, sworn.

JACOB KELLER, sworn.

THOMAS MILLER, sworn.

ABRAHAM HELLER, sworn.

WILLIAM KLEPPINGER, sworn.

JOSEPH KLEWELL, sworn.

JOSEPH STECKEL, sworn.

JACOB CORRELL, sworn.

ANDREW ALLBRIGHT, affirmed.

The Court adjourned until 8 o'clock on Monday morning, 26th August.

*Monday morning, 26th August, 8 o'clock, A. M.*

JOHN ZIEGENFUSS, Esq., sworn as Interpreter.

The Counsel for the prisoner requested that he might be permitted to sit by their side. The Court inquired of the Counsel for the prosecution, if they had any objections to granting this request, to which they replied in the negative.

MR. BROWN then opened the case, in the following address:



*With submission to the Court :*

GENTLEMEN OF THE JURY—The crime with which the prisoner at the bar stands charged, is one of rare occurrence among us. Hitherto, by the blessing of Providence, under the administration of wise and equal laws, we have led quiet and peaceable lives. Thousands scattered through our fertile valleys, are living without fear, without means of defence, looking only to the peaceable dispositions of their fellow citizens and the majesty of the laws for their protection. But we have been awakened in an awful manner from this dream of security and peace. The crime of the first murderer in all its most appalling characters, has appeared among us, and the prisoner at the bar stands charged as the perpetrator of that crime. As the representative of the Commonwealth it is my duty to unfold to you the details of the transaction. Sometime before the 19th of January 1833, Margaret Lawall the deceased, charged Charles Getter as the father of an illegitimate child with which she was pregnant. To avoid the penalties of the law he married her on the 19th of January. It was an unhappy, an illfated marriage. It commenced in crime, and, as the evidence in the cause will show you, it ended in blood. It is but too evident that Charles Getter entertained no affection towards the victim of his seduction. From the time of the marriage to the night of her death, this unfortunate woman was neglected, ill treated, and abused by him—dark threats were uttered by him against her, which it will be seen he has but too fearfully fulfilled. On many occasions he has been heard to say, that he would get rid of his wife; and when asked how he would get rid of her, when told that the law would not release him, he would give no other answer than to reply, “I’ll get rid of her.” We shall show you that on one occasion, he fixed the time of getting rid of her at three weeks; shortly after this he fixed the time at eight days. Within the three weeks, within the eight days, his wife was found a disfigured corpse, with marks of violence upon her person. We shall show you that upon another occasion, when a neighbour speaking in allusion to the situation of his wife, told him he would soon be a father, he replied: “I will not be a father;” and when the remark was repeated, he replied in a more emphatic manner, “John you shall see that I will not be a father.” He is not a father. The mother and her unborn child have been hurried together to an untimely grave, by the hand of violence; and we say that that hand, was the prisoner’s.

We shall show you, that after his connexion with the deceased, but before his marriage, the prisoner became acquainted with a female by the name of Molly Hummer—that from their first acquaintance, he appears to have been fondly and devotedly attached to her. She alone appears to have had the power to touch his iron feelings; his affection to her was expressed in numerous ways, constantly seeking for her society, making her constantly the theme of his conversation, and declaring in the strongest terms that he would have her for his wife, cost what it would. We shall show you that on the very day of his marriage he sought the presence of this female, fearful lest the tidings should reach her ear from other lips than his own, and unaccompanied by those consolations which he believed it to be in his power to administer; and that while his poor wife was sitting with a breaking heart beside the fragments of the then neglected wedding feast, he was soothing the feelings of another, and keeping alive the flame of lawless and unhallowed passion. Among the many passions which agitate the human breast, none is more powerful or more widely extended in its influence than love. The criminal records of our country have long since shown, that that passion which, to virtuous woman is heaven’s richest gift, and to virtuous man the strongest motive of honourable exertion; when suffered to exist without virtue, and when over-leaping the barriers of religion and of law, has been the occasion of crimes of the greatest magnitude and of the deepest dye. Here then we say was the motive of the prisoner.

On Saturday the 23d of December, the deceased and the prisoner had a meeting at the house of Aaron Bunstein; they conversed for some time before the door, and then separated; the prisoner went off, and the deceased entered the house. She said “she was so glad in her heart that he (the prisoner) had quite other feelings, and that he was going to live with her.” She after this, made preparations to move—rented a room, purchased household furniture and provisions, and was to have moved on the day succeeding the murder. The prisoner after this, told his acquaintances that he believed he now would live with his wife. But even here his tongue betrayed him; the fixed and settled purpose of his mind was not so easily concealed and suppressed. We shall show you that even while he was making those professions in pursuance of the supposed amicable arrangement at Bunstein’s, he more than once, in an unguarded moment, declared and vehemently protested, that “he never would live with her one single hour.” We shall show to you that he has acknowledged that he had promised to live with his wife, and had agreed to assist her in moving—and that he was found the very day on which that moving was to have taken place, at work in a stone quarry, and that he took no steps whatever towards keeping his promise. On the 28th of February the body was found—the deceased had left the house of Peter Wagoner the evening previous at half past eight o’clock. As she did not return in the morning, enquiry was set on foot and search made. Running from Peter Wagoner’s in a Southerly direction, to the Bethlehem road, there is a lane, along this lane is a stone wall on a bank, considerably higher than the road—behind this wall the body of the deceased was lying, her head lower than her feet, in a small hollow, her throat bearing marks of bruises, and on the right side of the throat, the mark of a thumb-nail was distinctly visible—the corps lay upon the back, the clothes in order, one hand upon the breast, the other by the side.



On raising the body it was discovered that the comb was lying under her head and broken in small pieces: This together with the marks upon the neck, furnished conclusive proof that considerable violence had been used. The situation of the bank, the height of the wall, and the state of the dress of the deceased, show'd that she had not been forced there against her will—she must therefore have gone with some person in whom she had confidence. Who was that person? On the body were found her ear-rings, and some rings upon her fingers; she had not been murdered for purposes of plunder. The next question was, with whom was the deceased seen in company the evening of her murder? that question was answered by David Wagener, a witness who will be produced before you. On the night of the 27th David Wagener looked at the clock and found it was half past eight—at the same time the deceased left the house for the purpose of going to Adam Wagener's, to have a sausage prepared for her own, and her husband's dinner on the next day; as she left the door the family heard some one speak to her; and David Wagener got up and went to the window and looked out; he observed, "mother there is Charles Getter at the door with Peg." The night as he will testify to you, was clear and bright, and he could see the prisoner distinctly. One said to the other "come;" they went off together. The deceased was next seen at the house of Adam Wagener, where she remained for a few moments, gave some directions about the sausage for dinner, and went out; this was the last seen of her, till she was found a corpse. We shall show you that Getter left Clauss's where he worked, on the evening of the 27th, at a quarter after six o'clock, that he arrived at Heil's the place where he slept about ten minutes before nine—making two hours and thirty-five minutes. The whole distance is four miles and a quarter. According to his account he went straight, stopped no where, and saw no one on the road. We shall show you that he passed over the same distance the next morning, in a little more than three quarters of an hour; we shall show you, that during the day he had a conversation with two of his fellow-labourers; that they told him that they were going to Hackman's in the evening, and that Getter saw them leave Clauss's for Hackman's, and did not offer to accompany them, altho' Hackman's stands upon the very road which according to his account he travelled on his way to Heil's; and that when he left Clauss's he went in a direction contrary to the one which he said he took. We shall further show you that he was on terms of intimacy with Hackman's family, and yet that none of them saw him that evening. When Getter was arrested and charged with the murder of his wife, he merely denied it and asked no questions as to how she met her death. Curiosity is one of the strongest feelings of the human mind. It often exists in full force in the minds of men whose feelings seem to be obtuse and blunted to the sufferings of their fellow men. However small the compassion such men may feel for the sufferings of others, a prying curiosity even seems to prompt them, to learn their histories, and to trace their actions. If common humanity had not here prompted the prisoner to enquire into the circumstances under which his wife met her death, this feeling would at least have prompted him to make some enquiry for his own satisfaction—if indeed he was not, as we suppose, better able to tell, than to hear the tragic tale. You, gentlemen, are to account for this silence in a manner consistent with the prisoner's innocence, if you can.

These are the main features of the case, as they will be presented to you in the evidence—some other matters, of minor importance, will also be presented to you; on these I will not dwell, at present. From what has been detailed to you of this case, you will perceive, that it rests partly upon positive, and partly upon circumstantial evidence. Positive evidence is that which is derived from the testimony of a witness, who swears that he saw an act committed. Circumstantial evidence is the proof of the commission of an act, by the proof of those facts and circumstances which usually attend it. If one of you should hear a noise in an adjoining room resembling the report of a gun, if you should immediately hasten thither, and find the room filled with smoke, and perceive a smell resembling gunpowder, there would be circumstantial evidence, that a gun had been discharged; and the evidence to your mind, from the facts and circumstances, would be almost as strong as though you saw the act committed. (*Here Mr. Brown read from 1 Starkie 514, ib. 477, ib. 478.*) If one of you should have a bag of gold in a room, and you knew that but one person had entered that room, and you found your gold was gone, here would be only presumptive evidence that that person took it, but to your mind it would be as strong as though ten witnesses swore they saw him take it. (*Mr. Brown read from 2 Russell on Crimes 665, note c. 7 Pennsylvania laws 693.*) Circumstantial evidence may often produce a greater degree of moral certainty, than positive evidence; witnesses may be mistaken, they may be induced to commit perjury, but facts are mute witnesses which cannot lie; we can only be mistaken in the inferences which we draw from them—wicked men may combine for the purpose of accusing an innocent man of crime, and may on account of their common purpose tell a consistent story. But in the present case, we say to the prisoner, out of thine own mouth, will we condemn thee—the inconsistent stories of your lying tongue, shall be ranged against each other, and their falsehood detected—the evil propensities of your wicked heart shall be brought up in judgment against you—the neglect and abuse of your poor, injured, murdered wife, shall be made to point you out as the author of the deed. Gentlemen, human ingenuity cannot devise a tale of circumstances sufficient to procure the conviction of an innocent man; especially when those circumstances are to be detailed by a number of witnesses, strangers to each other. The reason of this is obvious, falsehood is various in its shapes; truth is simple, and always consistent with itself. There



is also another presumption bearing upon this case, founded upon reason—that what a man earnestly desires, he will endeavour to obtain, and that what a man has said he will do, he will attempt, if an opportunity be offered him.

If, gentlemen, we establish these facts by the evidence, we shall have shown that the prisoner is connected with this murder, by the circumstances of time and place, as he was the last person seen with the deceased, and near the place where the murder was committed,—we shall have shown him to have been connected with it by motive—the motive of aversion to his wife, and attachment to Molly Hummer; we shall have shown you that he had time enough to commit the murder, and that according to his own statement, more than an hour of his time on the evening of the murder is unaccounted for—we shall have shown you that he indirectly threatened the safety of his wife—we shall have shown that he told different and inconsistent stories as to living with his wife, and that he attempted to deceive and mislead her—we shall have shown that his conduct when taken, was not the conduct of an innocent man; and one ignorant as he pretended to be, of his wife's murder. This we think will be sufficient to satisfy your consciences in rendering a verdict of guilty.

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After Mr. Brown had concluded his address, the witnesses were called to the stand, and proceeded as follows:—

*Jacob Weygandt, Esq., sworn.*—Charles Getter was brought before me on the 19th of January, 1833, on a charge of fornication and bastardy with Margaret Lawall. She and Christian Willouer, constable, came with him. They sat for a considerable time, he said very little for some time; I believe I was attending to some other business; I finally told him he must do one thing or the other, give security for his appearance at court, or marry the woman, else I would commit him. I think they sat by for a considerable time, and then he called her out into the entry, they were there a short time and when they returned into the office he said they would be married. I then told them to stand up together. I asked him if he understood sufficient English to understand the ceremony, he said he did. I married them—I judged from her appearance, she was pregnant; his eyes were very red; that I saw. They left my office together. Charles Getter came to my office on the 25th of January, 1833, and paid the costs and marriage fee—he asked me if he would be obliged to live with this woman before the child was born. I told him she was his wife, and he must support her. He said he would advertise her in the newspapers. I told him that would make no difference, that he would be obliged to furnish the woman with such things as were necessary. He did not say any thing for some time, and then he said he was sorry a hundred or a thousand times since, that he had married her.

*Elizabeth Brader, sworn.*—Charles Getter came to our house on the day he was married, in the afternoon between four and five o'clock—he told me he was married—he cried, and pretended to be very sorry that he was married—he said he did not care so much about it, but he pitied Molly Hummer so—that I should not tell her of his marriage, he would tell her himself. It was sun-down or a little after, when he went away. Molly Hummer was there, nursing my son's wife. I first noticed there was something up with him, on the porch, he was there fretting and crying—I told Charles that I did not wish him to stay there that night, the neighbours might think he was there with Molly, he said he would go home. Molly said if he did not want to go home, he should go to Walter's, he said he would go home—it was late in the evening—this was on Saturday evening. In the week following, he came there—he was in the habit of coming there backwards and forwards. He said he would not live with his wife—he said he would be rid of her before three weeks were around—he was going to off Jersey. He said if she was in the family way it was none of his, he could prove that others were in her company when he went to see her—he always said Molly was a decent girl. When I plagued him about her—he said he would have Molly Hummer if he had to walk on pins to get her—I told him he was married to his wife and he ought to live with her, and he said he would not, he said he would be rid of her, he wished her dead—he said he could get a batteaux and cross the river to Molly—I often told him he had better put Molly out of his mind, and live with Peggy, he said he could not and would not. On Sunday, I think, before the body was found, he came to our house in the afternoon about three o'clock or thereabouts, he was walking backwards and forwards, I told him to sit down—he asked where the rest was—I told him they were gone to singing-school—he said he did not know what was the matter, he had no rest, he said he had come up too to go to singing school, but it got too late, he would go home again—he sat down on the chair and said now Molly was gone. I told him he was a fool, she was not out of the world—he went off again, said he would go home, he seemed to be uneasy, red in his face, as if he had been walking fast—he sat down and seemed to be sorry when he said Molly was gone—he shed no tears that day—I think he said something about his wife, but I cannot recollect what he said—Molly was not long at our house after Charles was married. We call it three miles from our house to his sister's, where he had his home—his sister was Rebecca Lawler, he was not with her at our house after he was married—he used to come to our house often before ever Molly was there—my son took Molly out in the kitchen the day I was there. On the Sunday when I told him he should put Molly out of his head and live with his wife, he said he would not put any thing in her



way, but he would not live with her. He said this twice whilst he was coming to our house backwards and forwards, but whether on that Sunday before she died I cannot say.

*Cross Examined.*—I never heard him say or threaten to do his wife any injury—he said he would stay about and work and pay off all of his debts, and then he would go off to Jersey. For better than a year, he had been in the habit of being backwards and forwards to our house—he was well acquainted there—he is a labouring man.

*John Brader, sworn.*—On the evening of the day he was married, Charles Getter came to my house. I came up from the barn where I was at work, to the porch, and I saw Charles standing on the porch and he appeared as if he was crying. I asked, what was the matter with Charley—my son and woman were standing by him—they answered that Peg made him trouble—I asked what Peg, they said Peg Lawall—then I went into the house, my wife followed me. As I went, Charles said they should not tell Molly; he would tell her himself—I went down to the barn; I saw Getter and Molly Hummer in the kitchen together; don't know that any other person was with them; I did not go through the kitchen; went around through the other door—I heard my wife tell him not to stay there that night, that it might make a great noise among the folks if he would stay there all night, on account of Molly being there—my wife told Getter that if he did not wish to go home he should go to Walter's—Walter's is about 50 rods from my house—Molly told him he should go over to Walter's to sleep; I then went down to my work and did not see him go away; this was just about sun-down; he was pretty often at my house, after this; I afterwards told him he had better go and live with his wife; Getter said he would not; I told him he had better for she had some money to get, which would give them a handsome living together; in reply to this and every time, he said he would not live with her—he did not give any reason at that time—I do not know that he mentioned Molly Hummer at that time, nor at any other time—he came pretty often to my house, and I always plagued him, that he should live with his wife; he said he would not; and I told him it appeared he would soon be daddy; he said “John, you shall see I won't be daddy;” I replied that I heard by the talk that he would soon be daddy; he repeated emphatically, raising his finger, “*John, you shall see I won't be daddy.*” I plagued him about it every time he came to my house, and told him that he should go and live with his wife; every time he said he did not want to live with her, and that he did not want her money; he said he was sorry he was married, but assigned no reason; he never, to the best of my recollection, connected Molly Hummer with this subject—I was plaguing him about getting married; he said he would get clear of her; I said he could not, without she would let him go free, or clear; he said he would get clear of her before three weeks were round; that he said once in our room; I told him he could not; he said “I'll get clear of her;” but he never said how. Afterwards he said he would get clear of her before one week was round; this was in my house; when I told Getter he could not get clear without she would let him; Getter made no reply; he had been wishing that his wife was dead; I said he should not wish that, he might die before she would; I don't know that he made any reply to this.

*The Commonwealth proposed to ask the witness*—“How did Getter and Molly Hummer conduct themselves, when together?”

Objected to, by *Mr. Porter*, on the ground, that the question referred merely to the opinion of the witness, which is not evidence. He may state the circumstances from which he formed his opinion, and the jury, from those circumstances, can form an opinion for themselves.

*Mr. Brooke.*—The question is analogous to that which is always permitted in cases of assault and battery, viz: “Was the man angry?” It is as impossible for the witness to describe the circumstances from which he formed his opinion, as it would be in that case for him to depict the situation and posture of the muscles of the face.

Objection overruled.

*Witness.*—When they were together I never took notice what they talked about. Molly was at my house only about one week after Getter was married; before he was married they had pretty often talked together in the evening. They were always making fun together and laughing before he was married, they sat together in my room, the rest of the family were there: sometimes he staid until nine, sometimes until 10 o'clock in the evening, sometimes he staid all night. I almost always went to bed before the rest—I don't know that the whole family ever went to bed and left Molly and Getter up together. It was the week before she was found dead, that Getter said he would get rid of her before a week, and it was about three weeks before her death, that he said he would get rid of her in three weeks. Getter came to my house on the Sunday before the body was found, about the middle of the afternoon. He had his Sunday clothes on, he looked somewhat bewildered—red in his face—he walked up and down in the room; I told him to sit down and rest himself; I asked him what he came up so late for; he said he would go about a little to spend his time, it troubled him so; after that he said Molly is gone now; then my wife said he should not be so foolish, that she was not out of the world. I asked him if he was going out to work next day, to quarry stone; he said yes, he was; I asked him why he did not put on his working clothes; he said he thought he would go about a little to spend his time he felt so uneasy, it troubled him so; I asked him if he was going home that evening; he said yes; I told him he had better have put his dirty clothes on, and then he might have staid up, and not have gone down again. He went home that evening, I have no recollection of his saying any thing about Peggy



that evening, the next evening, (Monday) he came there again, he sat there awhile till about bed-time and then asked whether he could stay, we told him he might if he wished to stay. Then he pulled his round-about off and threw it into the corner, and went to bed—next morning when he got up, he said he slept so good—that he had not slept so good this long time, as he had last night; he said he reckoned he would come once more this week and sleep at our house, we said he was welcome. I did not see him any more till that morning after her death. A little after sun-rise that morning I saw him.

*The Commonwealth propose by this and other witnesses, to prove*—that the prisoner acknowledged that he had slept with Molly Hummer after he was married to the deceased, and to follow it up by proof that on his examination before the committing magistrate, and on other occasions, he denied it, and gave different and contradictory statements of his conduct and behaviour towards Molly Hummer and his wife.

Objected to, and waved for the present.—[See page 14.]

*Monday afternoon.*

*Cross examined—witness.*—He did say that he wished he was dead, but not at the time he said he wished his wife dead. I do not remember his connecting these two sayings together before the justice. Charles Getter had been in the habit of being at my house very often for several years; Molly Hummer said he should go and live with his wife.

*Re-examined by the Commonwealth.*—She behaved well enough when she said this, she always said that he should live with his wife.

*The Commonwealth offered to prove*—That he and Molly Hummer have been seen alone in a room together.

Objected to by Mr. Porter, as having no relevancy to the issue.

*Mr. Brooke.*—The charge is, that he murdered the wife whom he was bound to cherish and protect, and any evidence that will furnish a motive, is admissible and relevant, no matter how remote.—1. *Starkie*, p. 29.

*Per Curiam.*—No legitimate inference can be drawn from the fact of their being together. The acts and declarations of the party relative to the offence, or the deceased, may be given in evidence.

The offer over-ruled.

*Benjamin Brader, sworn.* (testified in German.)—On the Sunday he got married, Getter came to our house about 3 o'clock; he was crying on the porch, and told me he was married. He went into the kitchen and told me to tell Molly Hummer to come out into the kitchen; I went in and told her, and I staid in the room. I did not see what passed between them; he did not say what he wanted with her. I came out into the kitchen and they were standing there together; I did not hear what they were talking about; they were together about a quarter of an hour. I saw him go away,—they said nothing when they separated. A week before Peggy was found dead, he told me to tell Samuel Heil to get his watch from Easton for him—he was coming down that week to get it. He was there after he was married—can't say how often; he was there once after—can't say how long he staid. I once slept with him, but can't say whether it was before, or after he was married; but I had no conversation with him about his wife. He once told me, coming up from Heil's to the Bethlehem road, that he would never live with his wife. This was the Sunday week after he was married,—he was going out to Wagener's from Heil's up; I parted from him at the road. In the time he was single I was teasing him about Molly, and he said she was a nice, decent girl, and he had a notion to marry her. When he said he was going to Wagener's, he said he was going to tell her he would not live with her. I never had any more conversation with him about his wife. He was always saying he would not live with her; I do not recollect his giving any reason why. I was not at Heil's the week she was found dead.

*The counsel for the prisoner offered,*—To ask the witness, whether he did not tell the prisoner that a woman informed him that this woman was not pregnant?

Objected to, and admitted.

*Cross examined.*—I told him I did not know whether she was pregnant or not,—that was his own look out; he said he did not believe she was with child. I told Charles a woman told me she was not with child,—Mrs. Transue told me so; I cannot recollect when it was. I told him this: this was after he was married.

*Re-examined by the Commonwealth.*—We were talking about Charles being caught by the constable about this, and then Transue's wife told me this. This was before that Sunday that he went to Wagener's.

*Cross examined again.*—I never heard him in any of the conversations say any thing like a threat of doing personal violence to her.

*John Kindt, sworn.*—Eight or ten days after Getter was married, he came in and paid the costs at Esquire Weygandt's. I asked him if he paid the costs of getting married; he said he had; he said he would go and advertise her, that no man should trust her on his account, that he was determined not to live with her; and he told me he asked Weygandt if he must live with her before the child was born, and the esquire said he must, she was his wife.—He said he was determined not to live with her. I told him I would not advertise her, it was a shame enough so; I would sooner go as far as my legs would carry me. He said he would not,—he knew he could get clear of her, and would be clear of her in three weeks, it might cost what it would. After he was in jail, he sent word that Jos. Hackman and I should come in to see him. I went to the Sheriff, after we were sworn before the esquire, then we went down to the jail and visited him.



I asked him then if he had not said he would get clear of his wife, and have Molly Hummer, let it cost what it would, if she was for him. He replied that he had said it, and would not deny it. I then asked him if he had told his wife that she should come any where in the evening, that he should want to talk to her. At first he said he did not; and I then told him that he should recollect that he did,—and he said he did: he said he told her to come out to Walter's in the evening. I asked him if he went there, and he said he did. I asked him if she was there,—he said no: that when he got there, they told him his wife was there, and was gone. I asked him if he went there on purpose to see her; and he said no,—he went there to borrow a musket, or fetch his own. This is all I can recollect.

*Cross examined.*—I was not twice examined before the esquire. Joseph Hackman was with me both times I was in jail: the last time I was there, we had this conversation. I do not know that we had any conversation together the first time, when the Sheriff was with us. Abraham Sigman told me the first time, that Getter wanted to see me.

*Re-examined by the Commonwealth.*—The second time I was in jail, I asked him what was his object in going away from Clauss's. He said he went away to come down to his brother-in-law, and put on clean clothes: and I asked him if he had been there; he said no,—he did not get so far. That when he went to Heil's, Heil told him if he wanted to see Samuel Heil he should go up stairs, he was in bed; he said he went up stairs and talked to Samuel Heil, and he wanted him to stay all night and go with him to a vendue in Williams township; that he staid all night, but did not go the vendue, and came back the next morning to Clauss's to quarry stone.

*Cross examined again.*—I never told the story that he said he was going to the vendue, and started to go to his brother's-in-law, to get a clean shirt; but that he stopped at Heil's, and S. Heil wished him to come to bed to him. I never told it differently from what I have here. This conversation was after I was examined at Esquire Weygandt's. All that he told me about his clothes and meeting his wife, was the second time I went to see him. I was often at Esquire Weygandt's: he never swore me more than once. I don't recollect that I told Esquire Weygandt what occurred in jail: I might have told him. I don't recollect seeing Mr. Hepburn at Esquire Weygandt's office, and talking to him in the entry.

*Samuel Walter, sworn.*—I never had any conversation with Getter and his wife together. Getter came to my house between the 10th and 20th of February, and told me he would not live with his wife. He told me (in German) he would get free from his wife. I told him I did not know how he could, unless he was divorced by the court: he answered that she would not do that,—but that he would get free: he said he would provide for her, and would give security to that effect; he said he would go and see the girls, and nobody should prevent him. On the 22d of Feb. I had another conversation. I told him that his wife told me I should tell him he should come out, that she would not be running after him any more, if he wanted to live with her: he said he would have to go once and see her; he said he could live with her, if it was not for one thing; I don't know what it was. He was at my house on the 24th and 25th of February,—he said nothing,—staid only a few moments. I live about 6 miles from here, in Bethlehem township, this side of Clauss's, but a little off: I live on the top of a hill, near the Lehigh. I asked him on the 25th where he was; he said at Hackman's. Don't know where he had been on the 24th,—he came from the direction of Brader's.

*Cross examined.*—He never made use of any threats of bodily harm towards his wife. He said he would provide for her; that if she would rent, he would pay the rent: that was the time he said he would not live with her.

*Re-examined by the Commonwealth.*—I have conversed with Getter in jail on this subject. It was about hay-making: he said he wished he had staid at Clauss's that night. I mentioned that he would have a hard trial; he said he knew he would, but he had two good attorneys. I mentioned to him that if I had known what would have happened, it would not have taken place,—that his wife told me that she would not trouble him any more, but that I should not tell Getter. He said if he had only staid at Clauss's that night,—that he had wished so a hundred times, and a thousand times;—he said he was not on Wagener's road that night; that he went from Philip Clauss's towards Henry Clauss's barn, that way down to Hackman's,—from there down to Heil's the nearest way. I told him I understood it was sworn he did not go that way,—that he went another way—towards Philip Clauss's shingle pile. He said nobody could swear to that, for nobody saw him start, that nobody was on the porch, and that he looked and no body saw him.

*The Commonwealth here offered to prove by the witness,*—That in 1831, in a conversation with Getter, the prisoner, on the subject of girls swearing children on young men, he said, if any girl would swear a child on him, he would first have carnal connexion with her, and then kill her.—This is to show the bent of the man's mind, and his intention.

*Objected to.*

*Mr. Rees.*—This conversation has no relation to this murder, or to Peggy Getter. It occurred in 1831, before she was with child; and if the crime itself could not be proved upon him, could a threat to commit it be given in evidence? It is said to be offered to show the bent of his mind. They cannot give in evidence any act or conversation having no connection with this charge. His character is not now in issue. Mr. Rees read from 2 Jacob's L. D. p. 448, tit. Evidence.—We come here to meet the spe-



cific charge of murder, and nothing else: it cannot be expected we should be prepared to meet every allegation made against him, that is out of the case. If you could go back two years, you might be permitted to go back ten or twenty.—*Cited 2 Jacob's L. D. p. 460.*

*Mr. Brown.*—Any evidence which has a tendency to show the disposition of the prisoner's mind, is pertinent and admissible. The *weight* of evidence is for the *Jury*. If the fact occurred at a distant period, less weight would be conceded to it. Threats may be *general or particular*. Suppose a man should ride from Mount Bethel, swearing that he would shoot some man in Easton, and he did so kill a citizen of Easton, would it not be evidence of the bent of his mind? Suppose a man would threaten to shoot a person on his side walk, and actually should shoot him; would it not be evidence of malice? It is for the jury to weigh, not for the court to exclude.

*Mr. Brooke.*—In cases such as this, there is often a failure of direct evidence; and to supply this, no competent means to ascertain the truth should be neglected, or shut out from the triers; remoteness of time is no objection. He was placed in the situation to which the threat referred; the consequence of her situation was that to which his threat referred.

*Mr. Porter.*—They have not answered one of our objections; they can't give evidence of general character, unless we offer to support it. If general character cannot be given, nothing can be given to show the bent of his mind.

*Per Curiam.*—The testimony is inadmissible.

*Witness.*—There was no one present in jail when this conversation occurred. Kisselback went in with me; they were not far off, but I don't think they heard it. I went there to get a musket. To the best of my knowledge, Getter began the conversation.

*Mr. Porter.*—We will object to any further evidence until they prove a homicide.

*Attorney General.*—We have a right to conduct the case as we think proper, and are not to be dictated to, in our course, by the counsel for the prisoner. We are proceeding in a chronological order, which is the most regular. If, however, the Court direct us to prove the homicide, we will do so, and then resume our present course.

*Per Curiam.*—It is our opinion that a homicide should be first proved. The Commonwealth have proceeded thus far by consent: they should have set out by first proving a homicide.

*David Wagener, sworn, (testified in German.)*—I found the body of Rebecca Getter, on the 28th of February. She laid in Adam Wagener's field, with her head down hill, stretched out, the feet together. She had on a flannel frock, and a black handkerchief around her head; she had her left hand on the pit of her stomach, and the right by her side; she had on black stockings, and ear-rings. She laid on her back, her head laid down a little; her comb was broken; some of the teeth were broken out, and the comb broken into a good many pieces: I observed nothing else about the body. She was lying beside a stone fence; the place where she lay was higher than the road; it was right in the side of the road, inside of the fence,—two of the bars leading into the field were down. It snowed, and one of the women drew the handkerchief over her face, otherwise nothing was done to the body until Esquire Weygant came. I was there all the time.—(Here the witness described the manner in which the handkerchief was tied round her head.)

*Cross examined.*—The handkerchief was ruffled a little, I discovered no marks around the body, it was all froze very hard, the comb was under the head, we discovered the body about half past ten, or eleven o'clock; It did not snow the night before, there was no snow on the ground; Edward Wagener came in for Esquire Weygant, the handkerchief round her neck was loose, I saw her go out of the house the night before, the handkerchief was not then tied in the same way it was, further over the top of her head.

*Jacob Weygant, called again.*—I was called on the morning of the 28th of February, to go out to Wagener's to see a dead body; I went—I went up with a number of others, I saw a body inside of the fence dead, she was lying with her head towards Peter Wagener's, North—she was lying straight, her legs extended, her head down, the comb was broke, one of her hands lying on her body, and the other I think by her side—before I got quite near to her, I observed marks on her neck, on both sides—red marks—her head was lying in the ground in a hollow, I saw that hollow there yesterday, it did not appear so deep as on the former occasion, I can't recollect any stones being about there, the night before was a clear night, cold and windy—I only recollect one mark on each side of the neck—there is a little rise, or bank from the road into the field, the road is lower than the field.

*Cross-examined.*—There was no handkerchief about her face when I saw her—it is my impression that some of the pieces of the comb were under her head, she was taken to the house after I had sworn the Jury and they had examined the body for themselves, the Coroner was not there, I held the Inquest as a Justice of the Peace—the body was removed to the house on a light waggon, it was driven slow, there was straw first put into the waggon, the body was laid on its back in the waggon.

*The Commonwealth offered in evidence*—The Coroner's Inquest.

*Objected to.*

*Per Curiam.*—I have often known it offered, says Judge Mallery, and I knew one instance in which it was admitted by Gibson, C. J. but on argument he granted another trial on the very ground.—*The offer is rejected by the Court.*

*Dr. Samuel D. Gross, affirmed.*—I examined the body of Rebecca Getter on the 28th February, at the request of Mr. Weygandt—I arrived at Mr. Wagener's about half past one o'clock in the afternoon, and found the body of the deceased lying on a chest in flannel clothes, she was a woman of middle stature, her head was large, her neck short and thick, her shoulders broad, and her chest ample and well formed—her whole appearance being altogether remarkably robust, the body was stiff and entirely free from putrefaction; the face exhibited a full bloated appearance; the ears, especially the left, were of a dark livid color, the vessels of these parts being evidently distended with black blood; the integuments of the head were also discoloured as well as the whole face; the eyelids were turgid, the eye prominent, and the conjunctiva, (or the membrane lining them) more vascular than usual; the tongue was slightly discoloured, but did not project between the teeth; the mucous lining of the mouth was injected—the lips blue and distended; the mouth was filled with froth, and the nostrils plugged with ice, caused no doubt by a discharge of froth soon after death; the hair of the head was dishevelled, and the comb broken, several of the teeth being entangled in the hair; the throat exhibited marks of violence—on the right side was an indentation which was deeper in the middle than at the extremities, and extended into the true skin; it was about a half an inch long, and the twelfth of an inch wide; on the upper part of the wind-pipe was an abrasion of the epidermis or scarf-skin, extending from near the middle of the throat towards the left side of the neck, its breadth about one inch and a half, and its depth one inch; on removing the clothes, I also discovered an abrasion of skin on the left shoulder, but so slight as not to indicate any serious injury; on laying open the neck the veins bled profusely, so much so, that I was obliged to make frequent use of the sponge; in fact these vessels appeared to be distended to their very utmost with black blood; the carotid arteries, or the great arterial tubes which convey the blood from the heart to the head were empty; beneath the muscles of the neck on the left side, and towards the upper part of the wind-pipe, was a slight extravasation of blood, caused evidently by external violence; the Larynx and Trachea. (wind-pipe) were filled with froth, and their lining membrane deeply injected; The lungs were of a dark livid hue, their substance being so much engorged with blood as to bleed profusely on being cut into—they cover the sides of the heart; their black colour was uniform throughout; the heart was filled with blood, the auricles, or venous cavities, being almost black; the coronary or nutrient vessels of the heart were completely filled with blood, giving to the organ the appearance of a beautiful vascular preparation; the pericardium, or bag surrounding the heart was injected, and contained a small quantity of watery fluid; the diaphragm was arched, or pushed towards the chest; the abdominal organs presented nothing unusual in their appearance, their color being almost natural; the womb was injected with blood, and contained a foetus of about seven months—the bladder was empty;—I may here remark that all the thoracic and abdominal organs, were, with the exceptions that I have pointed out, in a healthy condition, exhibiting not the slightest structural derangement;—I may also state that there were no marks of blood on her chemise, or other clothes; the brain was not examined, as I was convinced that the marks on the neck, taken in connexion with the appearances exhibited by the face, the heart, and lungs, were sufficient reasons for concluding that deceased had come to her death by manual strangulation; I did not examine the liver minutely, it did not however present any thing unusual; froth is common in many diseases; there was no correspondent mark of violence on the left side of the neck—that on the right side had the appearance as if it had been made by the nail of a thumb or finger.

*Cross-examined.*—Strangulation may be produced by the hand, by a cord, by drowning, or by some of the gases; in hanging, or manual strangulation, death may be caused mechanically by pressure on the wind-pipe, by preventing the air from reaching the lungs, or by inducing an apoplectic state of the brain, or finally, by intercepting the nervous influence, causing thereby a cessation of the action of the heart and lungs; an apoplectic state of the brain could not be known with certainty to exist without an examination of the head; in a person dead from apoplexy, there might be froth in the mouth and wind-pipe, but I do not think that the capillary vessels of the head and face would be so much distended as to cause that black and livid appearance that was present in the countenance of the deceased. In some cases of apoplexy, the face is tinged and much darker than usual—whilst in others, and perhaps the majority of cases, the countenance is pale, and somewhat bloated. In epilepsy, the face is sometimes red and bloated, but when the disease has become habitual, it is generally pale; I have never in this disease seen the countenance livid, though not unfrequently red; I have never examined a person that has died with apoplexy or epilepsy; I have been a practitioner of medicine about five years and a half.

*Re-examined by the Commonwealth.*—I have made several experiments on the subject of manual strangulation—the brain was generally of a natural appearance, there being scarcely any congestion, in fact, in one instance not the slightest, nor any extravasation of blood in or upon that organ; In these cases the heart and veins of the neck were distended with blood; I made also an examination of the body of a man who hung himself at our rendezvous last winter, about a week after I inspected the body of Mrs. Getter; the appearances, especially in the heart and lungs, were very similar in both cases; In the case of the soldier, the countenance was also very livid and bloated, and the brain contained a large quantity of extravasated blood: In one of my experiments, the lungs were not so much congested as in the other—the subjects of the experiments



were dogs. Fodere is a copious writer on Medical Jurisprudence, and his work is considered as standard authority.

Court adjourned to 27th August, 8 o'clock, A. M.

*Tuesday morning, 8 o'clock, 27th August.*

*Witness continued.*—From the examination of the body of Rebecca Getter, I have no doubt as to the cause of her death; the marks on the neck, taken in connection with the appearance of the lungs and heart, are, I think, convincing proofs that she was destroyed by manual strangulation.

*Cross-examined again.*—The body was not frozen, nor was there any fire in the room in which I made the examination; I did not see any distinct finger marks about the neck—there was no indentation on the left side—the skin on the right side of the neck was not discolored, except at the mark above described; there might be an indentation or mark of a finger on one side, without a corresponding one on the other; this would much depend however, upon the length or shortness of the nails; respiration, I think might be stopped by the thumb alone, either in front or on the side of the windpipe. In case the hand was applied firmly round the throat, it would not necessarily follow that there should be any distinct prints of the fingers, unless they were applied with so much severity as to produce ecchymosis, or the nails were so sharp and long as to be forced into the skin—I have little or no experience on the subject, but it does not certainly take much pressure to close the windpipe.

*Re-examined again.*—Our knowledge on the subject of the appearance of bodies frozen, is very limited; I have read some works on the subject—in persons that die from freezing, the body is stiff, and the surface pale and shrivelled; as to the internal appearances they would probably be the same as in gradual death from other causes, with the exception that the internal organs would be more congested with blood; cold repels the blood to the more internal parts by constricting the cutaneous vessels; I never saw but one case of frozen limbs, and that was a few days after the occurrence of the accident. In some cases of apoplexy death takes place suddenly, without the slightest wavering, whilst in others it is slow and gradual, the patient lasting a few hours, days, or even weeks;—A pregnant woman might die with apoplexy, but this would greatly depend upon the habits, a predisposition to the disease and various other circumstances.

*Christina Walter, sworn.*—(Testified in German)—I had some conversation with Getter on one Sunday—he was then married about three weeks; he came to our house—Rebecca was there too—they were together awhile, and then I went out; then he asked me what Peggy said—I told him that she had not said much, but that he appointed her to meet him at our house—I told him that he should be industrious and smart and live with her; he said he would not—he told me he could go to the girls when he pleased—then they went out together—but what they spoke together I do not know;—The Sunday after, I was down at Anthony Transue's—when I was half way up the hill he overtook me, then he asked me when I saw Peggy last—I said I had not seen her since last Monday morning when she left our house, she had staid over night—he asked me when I would see her—when I would go out there. He said if I went out there, I should tell her he believed he would now live with her—keep house with her. I came to Easton on Monday or Tuesday of that week, when I saw Edward Wagener in Odenwelder's store.—I told Edward he should tell Peggy that Charles told me he would now keep house with her. When we went up the hill, he asked about different things, and about renting a room, and how much rent Peggy must give us; I told him. He then wished he could get the room also, and move there. I told him, if he wanted it, he should ask Walter; he replied, that he would come then, that week, and ask for the room. He came there twice, but did not ask for it. He said he wanted the room, because it would be so handy to his work. He was at our house on Monday evening, in that week the body was found. It was the second Sunday previous to the finding of the body, that I had the above conversation with him. I saw Rebecca once, after the conversation on the second Sunday, but did not see her after the last Monday. I sent Margaret word first of what Charles told me, and then she came there on Wednesday. I told her what Charles had said. Can't recollect what she said. She saw Charles at our house, on the next Monday and Sunday evening; he was not there long—not more than five minutes—said nothing about the room, or about living together; it was that Sunday that we went up the hill, that we had the conversation together. I never talked to Charles, after I delivered to Rebecca the message he sent.

*Cross-Examined.*—When Charles talked about the room, he asked if Rebecca had not rented a room of us.—This is what I meant before. When Charles would not live with Rebecca, she talked of renting the room herself; two of my daughters were about the barn; Charles and Peggy were about the fence at the barn; the girls were about there also.

*Re-examined, by the Commonwealth.*—Charles asked me how much rent we asked Peggy; he said he wished he could get the room, that he could now get along.

*Anna Matilda Walter, sworn.*—(Testified in German.)—Charles told me, I should send his wife word she should come out; that, if I could not send word, I should go out myself. Peggy came out then; he came there too; he said nothing to me; she and he went out together. He told me he would not keep house with her—he could not; he said he would rather go five or ten years to jail; he said he would have Molly Hummer for a wife, if it was in five years; he told me he was as single as ever he was. Charles said I should tell nobody anything—but I should tell her. He gave no reason why he would not live with his wife.

*Question, by the Commonwealth.*—Did he say any thing about its being against his nature.

Objected to, as a leader—and admitted.

*Witness.*—Charles said he could not keep house with her—it was against his nature.

*Cross-Examined.*—I never heard Charles, in any of his conversations with me, say any thing like a threat against his wife.

*Joseph Buss, sworn.*—(Testified in German.)—Getter and I talked a little about Margaret, at Philip Clauss's—I don't remember the day; I first teased him a little, and asked him whether he was married.—At first he said he was not, then he said he was. I thought he appeared a little sorry. We teased one another. He said it would not make so much difference to him, if he was not promised to another one. I asked him, afterwards, when he saw his wife last. He said, on Sunday. He said he came up from the Lehigh, and he saw somebody come down the valley—but he did not know who; then he went up to Walter's. She came after him, but he did not know her, until she came in. He said he then went over to Brader's, and stayed there awhile, and then went back again to Walter's; he said he wanted to speak something to her. He got no chance until Matilda came home—(I do not know whether he said he went out first, or she)—that then he got a chance to speak to her: he then asked her if she was in to Easton, at the Esquires. She first denied it; but afterwards owned she was. He said he did not care about the best Esquire, or all the Esquire's, in Easton. He then turned himself around, and told her to kiss his —; and then he went away. Getter told me he would not live with her. Getter said nothing about any one crying; he said nothing to me as to how his wife behaved on that occasion. This, I think, was in the latter part of January, or the beginning of February; I made shoes at Philip Clauss's; it was not on a holiday.

*Cross-Examined.*—I never heard Charles Getter threaten to do any personal violence to his wife.

*Joseph Hackman, sworn.*—*The Commonwealth propose to prove by him*—The acknowledgment of prisoners' having had connexion with Molly Hummer.

*Mr. Porter* objects to it, as having been already decided by the Court, and not being evidence.

*Mr. Brown cited Harrison's Law of Ev. p. 133 & 131*—and remarked, that, although evidence should be confined to the issue, frequently foreign testimony was admitted to explain motives, &c., when it would not be admitted, in other cases; if the prisoner is permitted to show affection and constancy to her, we ought to be permitted to rebut the presumption, by proof of contrary acts.

*Mr. Brooke.*—We have shown Getter's attachment for Molly Hummer, which was the cause of his estrangement from his wife—that he desired to marry Molly Hummer—and that his wife was the only obstacle which interposed to prevent the attainment of his most ardent wish. We have thus furnished a *motive* for the commission of the murder. Of all the passions that agitate the human breast, that of love is the most powerful.—Not all the rest, together, lead to the commission of so many crimes. This testimony will have a two-fold operation: it will show the degree of violence with which this passion raged in Getter, and that it was continually fanned and fed, until the hour of the murder. It will also supply an intermediate step, by which he descended into the depth of the present iniquity. One crime naturally leads to the commission of another.—There are but few instances of a sudden plunge from the heights of well-earned reputation into the deepest abyss of crime. This testimony will show that, before he became a murderer, he was an adulterer; that his moral sensibility—if ever he possessed any—was, by this means, seared and blunted, and the way spread for the commission of crimes of a deeper dye. On the trial of Mrs. Chapman, the transactions between her and Mina were all permitted to be given in evidence. The decision, in this case, was not upon the ground that he was connected with her in crime.—(See *Mrs. Chapman's Trial*, p. 27, 28, 29.)

*Per Curiam.*—I have meditated much on this subject, but think it is not evidence. If the doctrine were true, that one crime prepares for another, it could be proved in any case, and this cannot be done. We have permitted the declarations of his feelings against his wife, and in favour of Molly Hummer, but this proposition involves the character of an individual unconnected with this trial; here the offence alleged is not connected with the charge against the prisoner—it is of a different character and grade.

The offer rejected.

*Witness.*—I had some conversation with Getter, about living with his wife: he said he was not going to live with her; he said he would get clear of her, let it go as it would; he said he would sooner have the other, Molly Hummer. This was after he was married about a week. I never had any other conversation with Getter on this subject.

*Cross-Examined.*—*Question, by Mr. Porter.*—Did you ever tell Charles Getter that any one else had connexion with his wife?

*Answer.*—I did tell him that I saw another fellow go home with her once; that was all I told him. I did not tell him that I saw them in bed, but in a room where there was a bed. I went to the jail with John Kindt.

*Re-Examined, by the Commonwealth.*—We talked about these things; he said he was as innocent as a child that never was born; he asked me where they found her, when she was dead. He said he should try to get somebody to go his security, so that



he could get out of jail. He said nothing about being, at Heil's, or going there. The first time I was at the jail, John Kindt and the Sheriff were along; but, the last time, only Kindt; the last time, we were there half an hour. We talked a good deal to him; there was no person else talking to Getter whilst I was there. Kindt also talked to him; we did not talk about this matter the whole time. I can't recollect that any thing was said about Samuel Heil; can't recollect whether any thing was said about a vendue—I did not listen to them all the time. I told Getter who it was that went home with Rebecca, (Bill Werkheiser;) I did not know right what Charles replied. I told him this in the winter before his marriage. I told him that the room I saw them in was at Peter Wagener's; can't recollect whether I told Getter what room that was. I did not listen to Kindt and Getter all the while; I was in the same room; they were sitting on a bench, and I was at the stove. I heard him say something about making an appointment to meet Peggy at Walter's; he said he did. I don't recollect any thing more—don't recollect whether any thing was said about going to a vendue in Williams' Township, and meeting Samuel Hiel, at his brother-in-law's, and his being persuaded to stay at Samuel Hiel's all night. I did not hear John Kindt ask him what his object was in going away from Clauss's, that night.

*Benjamin McVaugh, sworn.*—Getter told me he would have Molly Hummer for his wife, if it should be in five years; this was on the road going to a frolic—it was last spring; I can't recollect the evening—it was on a show frolic. I had been at Michael Kellers, working all day.—It may be three or four weeks before Getter was arrested; it was after he was married.

*Cross-Examined.*—It was not on the 22d of February; I did not say so before the Esquire. I never heard him threaten to do any personal injury to his wife.

*Anthony Transue, sworn.*—(Testified in German.)—I am acquainted with Getter; had some conversation with him pretty soon after he was married; he came to my house about two weeks after he was married. I plagued and teased him a little, and asked him whether he was single yet. He said, as single as ever in his life. I asked him why he would not keep house with her. He said, he never in his life would keep house with her an hour.—He said, if you were in my place you could not either. that he would yet have the one he wanted. I then told him, that was Molly Hummer, and he gave me no answer; the day of this I can't say. He was at my house twice after he was married. The time I had this conversation, he was there from eleven o'clock till towards night; it was a rainy day; it was the first time he came to my house.—I noticed nothing peculiar in his manner.

*Cross-examine.d.*—He said that if he had it to do over again, he would not marry her, but it was now too late. I cannot remember that he said he would have to provide for her, but think there was something of the kind said. I never heard any thing like a threat or intimation of doing her any bodily harm.

*Elizabeth Transue—sworn.*—(Testified in German.)—Getter came to our house on a Monday about two weeks after he was married: when he came there, my husband asked him whether he was single yet:—"Yes," said he, "as single as ever I was in my whole life." I then passed in and out attending to my business. We then asked him if he was going to keep house with her: He said never in his life one hour—He would have the one he wanted. I had another conversation with him on a Sunday at Sam. Walter's the Sunday before her death; I asked him if he had not been with his wife; he said no: I said, yes you were; he asked me who told it, I said Sam. Walter's wife. I then asked him whether he would not keep house with her; he then said he believed he would. I said his wife had promised to come out to Walter's or to our house; he said he thought she would go to our house, and Getter went with me to our house; he went right away again, he was not there two minutes in the house. He came there again on Monday morning. I gave him an umbrella on Sunday, and he brought that back—he just came in and left it and then went away. I did not then speak a word to him—we sat at the table eating.

*Cross-examined.*—I never heard him make any threat or intimation of violence to his wife. We live on the Lehigh. Getter's brother-in-law lives below Heil's, on the Lehigh.

*Peter Lawall—sworn.*—(Testified in German.)—Getter told me I should tell Peggy to come to Sam. Walter's—he would tell her something. This occurred about four weeks before her death. I told her: whether she went, I cannot say. This was before they were married. There was no other conversation about this. When I told her, she pretended as if she would go there; she said she would go.

*Cross-examined.*—I worked at Hackman's, but it was before they were married. I am related to Peggy—my father and deceased were first-cousins. I think I did not say before the Esquire that Getter told me to tell *his wife* to come out.

Adjourned till afternoon.

*Tuesday afternoon, 2 o'clock.*

*Thomas Hope, Esq.—sworn.*—On Sunday before the murder, I had a conversation with Getter on the subject of his marriage, before my door. He stopped opposite me, and I asked concerning his wife. He asked me if I knew in what way he could get clear of her: I told him I did not think he could get clear of her by divorce, unless for misbehaviour. Some words then passed. I told him he had better go home and live with his wife—that he should not have married her if he did not intend living with her. He said he was very sorry he had married her, and wished he had not. He said he

would never keep house with her; that he would sooner go to jail for a time—I do not recollect how long.

*George Hackman—sworn.*—(Testified in German.)—Getter said to me he would not keep house with his wife; he said he would have Molly Hummer—it might cost what it would: I think this was since he was married.

*Cross-examined.*—I never heard Getter make a threat, or any thing like a threat, against his wife.

*Aaron Bunstein—sworn.*—(Testified in German.)—I had some conversation with Charles Getter about his wife. He came to our house on a Saturday afternoon previous to the finding of the body. Charles and Peggy were there together; he was there awhile before she was; he was there till 4 or 5 o'clock. I asked him if he came there to rent a room; he said she sent him word to come there, and he wanted to see what she wanted with him. After awhile he went out: my wife was before the door. My wife came in and said she would go down and tell Peggy to come up. Getter said he could go down himself. She then went down and brought her up. Peggy came in, and Charles got up and went out. She went out too. They stood before the door more than an hour and talked together. I did not hear them; it was nearly night; he went away, and then she came in.

*Rachael Bunstein—sworn.*—(Testified in German.)—The Saturday evening before the body was found, Getter came to our house; it was about one o'clock when he came; he was in the shop with my husband a good while. I told my husband that he should come over; I had to finish my work. Getter came with him; they were together in the room until I was almost done with my work; then Getter came out to the door; he looked at me and said, he wondered whether she would come up. I asked who, and he said Peggy; I asked him if she intended to come up, and he said yes; he said that Samuel Zearfoss had told him at Gosler's tavern, that she wanted to meet him there; he then went into the room again, and I soon followed him. I told him I would go down and tell Peggy to come up; he said something but I do not recollect what, but he did not tell me to go. I then went down to fetch her; when she came up she went into the room, she said nothing to him, nor he to her. Charles got up directly and walked out of the room; she followed him to the door. What they said I did not hear; they stood together till almost night, and then Charles went off, and she came in again.

*The Commonwealth offered to prove.*—That on the return of the deceased into the room, after the prisoner had gone away, she said that she was so glad that Charles had quite altered his disposition from what it was before, and that he was now going to live with her; that the deceased had made preparations for moving on the 25th of February; That on the Tuesday before the night when the deceased was missed, she stated that Charles was coming to her on that evening or the next, and that on Thursday they were going to move; That she said she was so glad that Charles was going to live with her now; and that Charles Getter was seen in company with her on the evening of Wednesday, which was the night before they were to move, and the night she was missed; and, further, that Charles Getter was seen going towards the place where the body was found in company with the deceased, and also going from the direction of the place where the body was found, towards the place where he slept on that night.

The testimony is objected to, so far as the declarations of the deceased, made in the absence of the prisoner, are offered.

*Mr. Porter.*—The declarations of the deceased, made in the absence of the prisoner, are not evidence, and are inadmissible. Mr. P. cited the case of *Com. vs. Krepps*, in Berks county, before his Hon. Judge Porter, Pres't, from a manuscript reported by himself. Upon sound principles the whole offer should be rejected—whether *in articulo mortis*, or not. The first deviation from this principle is in *Strange*—the second, in *Leech's Crown Law*: Even these exceptions should not, on principle, have been allowed. The sense of approaching dissolution is not in all cases equal to an oath;—There is no opportunity for a cross-examination. It is a general rule, that no man shall be prejudiced by what passes in his absence: 1 *Starkie*, 93, *ib.* 101. The case of Margaret Shaw, who was heard to say—"Oh father don't kill me!" was such an one, where the whole of the testimony was not heard; yet the father was hung, and the daughter had absconded to the Continent and was married.

*Mr. Brooke.*—We pay no attention to hearsay cases: Their objection is to the weight, and not to the admissibility of the testimony. The probability of the tale not being true, would exclude all oral testimony. There is no general rule of law, but what has sometimes wrought injustice. Oaths are often dispensed with in cases of declarations made by persons near their dissolution. Dying declarations are not confined to the dying declarations of a witness in a capital case. It is not that the sense of dissolution is equivalent to an oath, but that it elucidates, and was uttered without premeditation—without a view to consequences, and because it is the best evidence the case admits of. The conversation we offer was in the presence of no one, but by one who is gone; she told it without premeditation or artifice: it is the only evidence of that conversation we can have. The declarations are a part of the *Res gestæ*. 1 *Starkie's Ev.* p. 49, *ib.* 102, *ib.* 38. The question is, was the declaration made with a view to consequences—if not it certainly is evidence. In the case of a rape, if the woman makes a complaint immediately after the offence, all that is said is evidence, because it is fresh after the fact, without pause or artifice. In actions for assault and battery by



husband and wife, for assault on the wife, the declarations of the wife recently after the fact, are admissible:—1 *Phillips*, 219; 2nd *Starkie's N. P.* 241; *Skinner*, 402; 6 *East*, 193; *Harrison's Law of Ev.* 155—Every thing is evidence which tends to make plain the matter in dispute. The rules of evidence are the same in all cases. There is no difference between a petty larceny and a capital case. The rules that would obtain in the one, would also in the other.—14 *S. and R.* 275; *Thomplin's vs. Saltmar's heirs*; 1 *Chitty's Crim. Law*, 463.—Hearsay evidence may be used as inducement, and in illustration of more substantial testimony.—1 *Chitty's Cr. Law*, 569; 2nd *Bacon's Ab.* 663; *Mrs. Chapman's trial*, 66, 68—Mr. Chapman's declarations were admitted to show the state of feeling—here we propose to show the same thing. We are not to go back to the days of Siderfin for our rules of evidence. These rules must accommodate themselves to the state of society, which is very different at the present time from what it was in the days of Siderfin. And perhaps the same rule ought to obtain with regard to the admission of declarations, (sometimes called hearsay,) where they are made by a person who cannot be produced, and where they made without a view to consequences: If so, they are evidence; if not, they ought to be rejected. Here the declarations were made by a person who is not *in rerum natura*, and certainly could not have been made with a view to the purpose for which they are now offered.

*Per Curiam*.—We have no doubt about the question—it is not evidence—it is not part of the *res gestæ*—the homicide is the *res gestæ*—the case does not come within any of the cases stated—it is neither principal nor secondary evidence. I know nothing of the decision in *Mrs. Chapman's case*—I have not read it. If these declarations can be admitted, any thing she has said ten years before, can be also.

The evidence is rejected.

*Sed per Curiam*.—May they not prove the fact, that she was preparing to move on the 28th of February. The defendant's counsel require the offer to be put in writing, and the purpose stated for which the evidence is to be used.

*The Counsel for the Commonwealth*.—We offer to prove that Rebecca Getter proposed to move after the conversation she had with the prisoner at the house of Aaron Bunstein, and that she intended to move on the 28th of February, for the purpose of showing that he induced her to believe that he was on friendly terms with her at the time, and that for the purpose of decoying her from the place where she was residing in order to make away with her; and for all other legal purposes.

Objected to and waved for the present.

*Edward Wagener—sworn*.—(Testified in German).—Mrs. Walter told me at Odenwelder's store, to tell Peg to come out to Samuel Walter's—she believed Charles would live with her: I told her this—she did not say any thing. I told her this on Monday. I cannot say how long it was before the body was found. She was at our house the night before the body was found—I do not recollect the time of night—I do not know how long she was there. I only heard her speak. I went to bed a little past 8 o'clock—I had not been in bed long before I heard her.

Argument on the proposition.

Mr. Porter objected to the proof of the fact, as the inference attempted to be adduced could not be legitimately inferred.

*Messrs. Brooke and Brown sustained the offer*.

*Mr. Rees*.—They will infer from an inference, and found another inference on that—you can never found an inference upon an inference or a presumption upon a presumption.

*Per Curiam*.—The question is not can a presumption be founded on a presumption, but whether the fact is susceptible of any inference bearing on the case, not whether all the inferences alleged can be drawn—the fact of her preparing to move is evidence to show the state of feeling, but whether for any thing else, is a matter of argument.

*Regina Wagener, sworn*.—(Testified in German).—Rebecca was preparing to move on Thursday; she prepared herself to move as people do; she had prepared no further provisions than a sausage. It was between eight and nine o'clock when she came to our house; staid about fifteen minutes; she did nothing, she only came over there for that sausage. I put the sausage in water for her; this was the night before she was found. Peggy went towards home; I heard nobody in front of the house when she was in, but as she came to the house I heard some body talk to her.

*Cross examined*.—There was nobody at the house while she was there, my two girls, my husband, and myself, were up when she was there; she did not sit down; we did not talk much to her, but we did talk. One of my girls went with her to the little gate—our yard is fenced in; they stood a few minutes at the gate—it was a bright night, moonlight; I can't say how old the moon was; as much as I know, there were no clouds in the sky; it was pretty cold, it was windy.

*Sarah Zeafuss, sworn*.—(Testified in German).—I know nothing except that I went from the house to the gate with Peggy. She had prepared to move on Thursday; I saw her go about half way up the garden on her road home; she came to our house for a sausage; I think it was between eight and nine that she came; I heard a male person speak at the door just before she came in; I can't say how long she was in; she was in a while, about a quarter of an hour; we put the sausage to soak; just as she came in, I thought somebody passed the house, going round the house; I looked at her until she got half way up the garden fence, I saw nobody but Peggy; we were engaged in conversation at the gate; we stood at the gate two minutes or less; I can't say what time between eight and nine she came there.

*Cross examined.*—We were engaged in conversation at the gate before she started, we perhaps staid two minutes or less at the gate; I cannot fix what time it was exactly when she was there, it was between eight and nine o'clock, when she came in; it did not take my mother half a minute to get the sausage and put it in soak; I think she did not sit down; cant say how old the moon was, but it was a very bright moon-light night. The garden does not lie between the house and the road; I saw her on the road along the garden, she was in the road, when I saw her, I saw her go out of the big yard into the road, and up the road half way past the garden.

*Samuel Zeafrass, sworn.*—(Testified in German)—I drove over to Peggy's mother to get things for her for the moving—potatoes, meal, meat, and every thing that was wanted in the house. I took these things to Peter Wagner's. We unloaded them, and I helped take them in the house—the next day she was going to move—the next day she was dead. I then lived at Peter Wagener's, she had her home there too. I went out on the 22d of February to parade at Gaussler's, she told me I should tell Charles to come out to Peter Wagner's on Saturday afternoon. When I came out I told him, he said he would not go to Peter Wagner's, but she should meet him on Saturday afternoon at Bunstein's. He said I should tell her when I came home—she was gone to her mother's and did not come home that night. Saturday forenoon I was there, and she did not come home, I had to go away, and I told Mrs. Wagener to tell her.

*Cross examined.*—I think he said that he would not go to Peter Wagener's, because they were going to give him a lesson; but I can't remember. Peggy told me to tell Charles that if he did not like to come to Wagener's, to come to Bunstein's. I told this to Charles.

*David Wagener called again.*—I was at home on the 27th Feb.; I was sick, and took some medicine that night; Peggy went out that evening at half past eight o'clock; when she came out on the porch somebody spoke to her, then they went out towards the little gate, I then got up and said, Charles Getter is out here with Peg. Peg had the gate in one hand, Charles stood a piece before her—then, I think, it was him that said "come;" then they walked down towards Adam Wagener's. I was in the room at the window, it was a beautiful bright night, nearly as bright as day; I was 22 feet from them, they did not stand long at the gate; at first Charles had his face towards her and towards me.

*Question by the Commonwealth.*—"Are you certain as to the person."

Objected to.

*Question altered as follows.*—"Are you certain as to the person at the gate, and if so, who was it?"

Objected to, and admitted, and the matter noted by the Court at the request of defendant's counsel.

*Witness.*—I can freely say, according to the posture and stature, that it was Charles Getter and no other person. I have known Getter these eight or nine years, he lived with Samuel Walter, and I went to school with him; we went together to frolics, and were much in company together; he had on that night a pair of black pantaloons, he had on a brown roundabout and a black hat, bent up at the sides, according to the fashion. When the constable brought him to Peter Wagener's the next day, he had on the same clothes. It was about four or five o'clock, on the 28th of February that he was brought to our house. After Peggy went to Adam Wagener's, I did not see her until she was found dead.

Court adjourned till morning.

*Wednesday morning, 28th Aug. 9 o'clock.*

*David Wagener, continued.*—The reason why I recollect that it was half past eight o'clock is, that I wanted to go to bed. I generally look at the clock when I go to bed. The clock stood right by the side of the window where I looked out—we measured it from where Getter stood to where I was, it was twenty-two feet.

*The Commonwealth offered to prove,*—Where Peggy said she was going to, when she left the house.

Objected to, and rejected by the court.

*Witness.*—The field where the body laid is higher than the road; with the stone fence about five feet—the body could not be seen from the road—I was about two rods from the body when I saw it. There is not very much travelling along the road; it leads from the Bethlehem to the Pond road. There are three houses on this road, from where the road leads to the Pond to the Bethlehem road—David Kachline's, Peter and Adam Wagener's. David Kachline's is above us, as you come from Kachline's; there are no houses between Adam Wagener's and the Bethlehem road—the body was found probably 60 or 70 rods from a house. I was at Adam Wagener's when the constable brought Getter; I looked out and discovered that it was Getter; they came down through Adam Wagener's orchard; I was 20 or 30 yards off when I recognized Getter.

*Cross examined.*—I was in the front room, where we always are, when I saw Getter—the family were sitting in that room—there was light in the room. I was not sick nor lying in bed; I never said I was lying down, and got up and went to the window. I never said, when I first went the window, that Getter had his back towards me. The 22 feet was to where Peggy stood. In six days the moon would have been full; I can't tell how long it was before the moon set; I did not look in the almanack to ascertain that the moon wanted six days of being full; I can't say that the moon was considerably sunk in the west. I had pains in my belly. Right before our door there are some



pear trees; they are tolerable trees, but not very large; they are higher than this ceiling—stand south of our house, about 10 or 12 feet from the road. The house stands with the gable end towards the road; the nearest pear-tree may be 25 or 30 feet from the corner of the house. After the body was brought to the house there was a fortune-teller there. The stone fence is two or three feet from the top of the bank, and is not built up from below; it begins on top of the bank; the post fence on the top of this has three or four rails. I think the stone fence is more than eighteen inches high. In a straight course from Peter to Adam Wagener's it may be twenty or thirty rods; it is 3 or 400 paces round by the road. Adam Wagener's is nearest to the Bethlehem road; it may be 200 rods, or probably a little better, from the Bethlehem road to Adam Wagener's; I think it is not a half a mile, nor a quarter of a mile, but I don't know, I never measured it. The body was found nearer to the Bethlehem road than to Adam Wagener's house. Aaron Bunstein lives on the Bethlehem road, near where this road comes out. Edelman's is about twice as far from this road, on this side, as Bunstein's is on the other; Edelman's house is on such high ground that you can see down to Adam Wagener's. It is much further to the other than to the blacksmith's; you can see this place from there; you can see people at that place from Bunstein's from behind the house. It is probably 50 paces from George Edelman's woods to the place where her body was found; the woods is on the south side of the road from where her body was found—is not very thick—and comes to the road by which she lay; the road is worn down at this place; it is now a road that every body can go; it was formerly a mill road; any person above, or below that place twenty yards, could have seen persons standing there.

*Re-examined.*—When I first saw Getter he was standing before the gate, probably 3 feet; she stood before him; one said "come," and according to the voice it was him; he stood facing the gate, with his face towards me, 10 or 12 feet from the pear-tree; there was no shade there; can't say how long I saw him, probably a minute or so; the last I saw him he turned to go off; Peggy was with him. Edelman's house is more to the left than the woods, from where the body was found; the woods are nearer the Bethlehem road than where the body was found.

*Daniel Wagener, sworn.*—(Testified in German.)—I saw Rebecca that evening when she went out of our house last; I heard some body talk to her right before the door. I got up, went out, and saw them walk a piece off; I thought it was Peggy and Charles, but I am not sure; they were in the lane that leads up to Adam Wagener's barn, between the two gardens; I stood on our porch when I first saw them; I stood there perhaps 2 or 3 minutes; they were there in the lane when I last saw them.

*Cross-examined.*—I saw only two persons; I am not sure, but I thought it was a male person with Peggy; I could not distinguish any part of the dress; it was beautiful and light; I think there were no clouds, but am not sure; I did not see Peggy any more until she was dead; they found her about 10 or 11 o'clock next morning; nobody went out with Peggy; I heard nothing after I came to the door; the passage into our house goes in the entry; I could not distinguish what they said; if you are in our room, if every thing is still, and you listen very attentively, you may hear what a person is saying before the door; I did not hear this person speak so very plain; I had a book and was reading; our house is a stone house, the gable-end is against the road; there is a window in the gable-end, and two in front; in passing from the door to the road, you pass these two windows; there are two rooms at Adam Wagener's, and a kitchen in the middle; the end is to the road; Adam Wagener had a pretty large family at that time; there was four of us in the room when Peggy went out, and a little child; there is eight of us; Samuel Zearfass lived there, and Peggy made ten in our family; Peggy had no child with her; she had a child; don't know how old it was; it was not with her.

*Rachael Wagener, sworn.*—(Testified in German.)—I am a daughter of Peter Wagener; Getter told me that he would rather have the other one than the whole world; he told me they were promised; this was at home, in the kitchen; it was that Saturday morning when he came in to get married; he cried and said he was so sorry; he said he never could forget it that he had to marry this one; he did not tell me any more. Charles came in the kitchen and asked me where Peggy was; he said no more to me; he told me that he liked Molly Hummer so, that he would like to have her; he said it appeared so hard to him—that he was promised to her. Peggy went out of the house on the night of the 27th February alone; I heard somebody talk with her outside; the family were at home; part were in bed; one of my brothers lived out at King's; the others were in the room; I heard her speak, but not him; nor did I get up to listen or to hear. Peggy had prepared to move; she baked as we always do, and was going to move to Samuel Walter's on the Thursday following; she prepared every thing for moving.

*Elizabeth Wagener, sworn.*—(Testified in German.)—I was in the room when Wil-lauer came in on Friday evening, previous to the marriage; Charles didn't come in right away; Rachel came in first; when she came in she left the door standing open a little; then he came in right away; he sat by the stove and spoke nothing, and directly Peggy came in; she stood by the table, and they went up stairs directly; they staid up pretty long, when my girl went up and brought them down; then they were in the kitchen; I did not hear what they said; Charles staid at our house that night, and in the morning when I got up he was in the kitchen and cried very much; they then dressed themselves, went to Easton and got married; when they were married, they came back again near ten o'clock; I then got something to eat, and they eat together;

they were there an hour or an hour and a half, and then he went off; on Sunday he came there again, but they went first to Adam Wagener's about one o'clock: I did not see him after that until she was dead; I don't know any reason why he did not come to the house; there was no quarrel between Getter and our family. Peggy was going to move on the Thursday succeeding her death; she had made preparations in the manner that people do when they are about moving. Between eight and nine o'clock she went out of the house. I and one of my girls, and two boys and the child were in the room, and my husband was in the back room in bed; these were all the folks that I had in my house. Peggy went out alone; as soon as she came on the porch she spoke to some body; when she walked around the house David got up, went to the window and looked out; I did not see her after until she was dead.

*Cross-examined.*—I looked at the clock; I think it was half-past eight o'clock.

*Samuel Zeerfass, sworn.*—On the Wednesday before the body was found, I eat supper at Peter Wagener's; from there I went up to Frederick Wagener's; it was eleven o'clock when we came back, when we went to bed. Peggy was in the house when I left there; the next I saw of her was when we found her dead.

*Cross-examined.*—Frederick Wagener lives north of Peter's about 30 or 40 rods, on the north side of the road leading from Kachline's to the pond.

*Adam Wagener, sworn.*—(Testified in German.)—Peggy came down on Wednesday evening, the 27th, to my house; my wife brought her a sausage and put it to soak; she was a while in the house, and went off again directly; she was there perhaps fifteen minutes, perhaps not so long; I didn't hear any thing; I sat back at the stove; my girl Sarah went out with her; Peter's house stands north-east of mine, about 15 or 20 rods; my house is not as near the road as Peter's; the two gardens are between the houses; the houses face towards the south; there is a lane from my barn out between the gardens, about 16 or 18 feet wide; there are a pair of bars between the garden and the lane that lead to the barn; I cannot get to the barn without going through them; it is about 9 rods from Peter Wagener's porch to the lane leading to my barn; my family were all at home that night; they were all in bed but myself, my wife, and Sarah; we were in that room when Peggy came; I did not see her sit down. I was not present the next morning when the body was found; I saw it before it was moved; the field is pretty even; it hangs off to the north-west; a little higher at the upper side; there is a bank there and a stone fence; there was a post-and-rail fence three rails above the wall; the wall is two feet high and may be about three feet high where she laid; the woods lay to the left going up towards G. Edelman's; you can see from Edelman's to where the body was found, but not good, the woods being between; they are very thin—not much wood on now. Peggy looked as healthy that night as I ever saw her in my life; I was there when Getter was brought by the constable after the body was found, and I asked Charles if it was ever his notion to marry Peggy—this was the day he was taken—he said his mind had been never to marry her, and I then told him I thought bad of him—that it was over a year he went to see her; I told him he came mostly every two weeks, and sometimes every week. He said he didn't go to see her steady, but staid away a while. I told him that I thought it was about the time he went to see her that she became with child. I asked him why he would not marry her, but he gave no answer.

*Cross-examined.*—There are apple-trees to obstruct the view between my house and where the body was found; you can see through them, but not on the ground; you couldn't see good, for it was too far; it wasn't quite a hundred rods from my house to where the body was found; I can't tell whether it was further than from here to Judge Wagener's\* or not. My house stands about 30, 32 or 33 yards back from the road.

*Abraham Sigman, sworn.*—I was on the inquest, and saw the body lying inside the fence; it lay with the head descending; I went around to see if I could find any marks or scratching on the ground, but found none: the ground was frozen; she had a handkerchief laying over her face; it was snowing a little at the time; some of them took the handkerchief off of her face, I then went and examined her head to see whether there was any blood or lumps about her head; there was a hole in which her head lay, and a stone under her left ear: I could find no blood nor lumps on her heads; her comb was laying under her head all broken, and side-combs in her hair; the comb was broken in pieces, some of which stuck in her hair; she had rings in her ears; I think there was a glass or stone in them; she had rings on her fingers; she lay on her back, stretched out, with one hand on her body and the other close by her side; no marks on her hands; she looked blue about the face, and was bruised around the neck; the bruises looked red and blueish, and the skin under the chin chaffed off, as if it had been scratched; her hair was tangled, and her comb sticking in it; the body was about three or four feet from the fence; her clothes were down, but not as far as they ought to have been; we then put her on a wagon and took her to the house; there is a pretty high bank, and on the bank a stone wall and rail fence; I assisted in putting her on the wagon, and we laid her head on straw; we drove slow; she laid on her back in the wagon.

*Cross-examined.*—I did not examine closely to see how large the marks on the neck were; it appeared to me as if the thumb was on one side and the fingers on the other; it looked red and bruised; I saw no finger marks; it was red down on one side, about the breadth of four fingers; it looked a little red; don't know that I drank any thing that morning; think I drank a little wine, but not to hurt me.

\* Somewhat more than a square.



*John Burt, sworn.*—I was on the jury of inquest, held over the body of Rebecca Getter. The body was over the fence, her head down the hill; her clothes and every thing in order, and in its place; when we examined her we found the skin taken off the throat, pretty much off as far as a man could grasp; the skin was also off the chin, and for my I part could plainly see the thumb-nail and finger on the other side; the thumb-nail was on the right side of the neck; the wound was the shape of a man's nail; the place where the thumb-nail was, was considerably black; her clothes were all down as far as they could go; nothing was disturbed about them. Her comb, a large one, lay all under her head, all broken to pieces. I lifted her, and Mr. Owen took the comb out; her side-combs merely had slipped out of their places, lying along side of her head; her hair was not anyways entangled; after that we took her to the house. I did not observe any thing peculiar about her hair; she had onr or two rings on her finger, and ear-rings.

*Cross examine.*—On one side was the print of the thumb; on the other, I could see the mark of several fingers; the skin about her neck and under her chin was taken off, and it was red. The marks were blue where the thumb was, and where the fingers were was more blue than other places; the print of the thumb-nail was there and had not come out; it was blue and black. I never knew her in her life time. On Monday evening before this happened, she was at my house. I helped her out with her things she had brought for house-keeping; I should think she was about 30 years old; Jacob Erhard took out her things. I am a tavern-keeper.

*Eben Owen, sworn.*—I was at and of the inquest of Rebecca Getter. I first discovered the body over the stone wall; she lay straight,—her clothes neatly down. We examined her, and found her neck black and blue considerable; and the grain of the skin was broken on the chin and pretty low on the neck; the right hand side of the neck was not as black and blue as the left; she was taken up and put into a wagon. The marks on the right side of the neck were considerably large; I could not tell how large; it might probably have been as big as a quarter of a dollar; the mark on the other side of it was larger; it would measure about three inches. When she was raised up I discovered the remnant of a large comb, and put the same in paper and carried it over to the house; I took the comb up in the room where the woman was laid out; I laid it on the bed.—[The pieces of comb were exhibited to the witness.]—The comb produced, according to my recollection, is like the one I found, but I did not put the comb together. Her hair did not seem to be much entangled; pretty much as women generally put it up; her fore-lock seemed as if her comb had fallen loose and rolled to the ground; the back of the hair was something entangled where the comb was under it. I observed on the right hand side, where the lock had fallen down, some hair missing; her hair seemed to be whiter next the head than out-side. The head was made bald almost as large as an eleven-penny-bit; the skin was natural—the hair longer on one side than the other—seemed to be cut closer.

*Cross examined.*—I am a coach-maker by trade.

Court adjourned till 2 o'clock, P. M.

*Wednesday afternoon, 2 o'clock, 28th Aug. court opened.*

*Joseph Snider, sworn.*—I saw the body of Rebecca Getter lying in a field, said to be owned by Adam Wagener. She laid in the field by the fence on her back, stretched out; the ground was a little descending, down hill; there was a black handkerchief on her face when I came; where her head lay there was something of a hole appeared to be indented by her head. Her large comb was broken in a great many pieces—laid under her head; a side-comb being in one lock of her hair, I took that off and gave it to her brother, Abraham Lawall. I saw marks on her throat; there were two marks blood-shot, and appeared to be more filled than the others; there was one mark on the right side of her neck; it was not as long as the thumb-nail perhaps, not longer; the blood had settled under the skin; there was another mark on her neck, perhaps two, perhaps three inches; it run cross-ways of the neck. I saw no other mark; the colour of the marks was that of dark blood; I noticed no marks about the eye; her nostrils were filled with ice; I saw no other marks about the mouth; some froth in her mouth; her hair looked somewhat entangled about the head. The road is lower than the field where she laid in; can't say how much; it was a rise to the field; the fence sat on the rise; the fence was part stone and part rail; did not take notice of the height of the fence—stone or rails; I am acquainted with the situation of Adam Wagener's.—This road runs north from the Bethlehem road, by Adam and Peter Wagener's houses; a little north of Peter Wagener's house, it intersects a road running from Easton to the Pond, by Kichlien's; there was, at that time, but two houses on that road—Adam and Peter Wagener's; they are on the west side of the road; the gable-ends of those houses stand towards the road; Peter's is farthest north; the distance between them is as far as from here (the court-house) to the Easton Bank.

*Cross examined.*—I went out at the instance of Dr. Fickhardt; he told me I had better go out and I went; it was in the forenoon when I left home; can't say what time I got out there. I never studied surgery.

*Juliana Lietz, sworn.*—(Testified in German.)—I never had any conversation with C. Getter. He came to me once as I went home from my walk; he asked me whether I could tell his fortune, or the truth; I replied no, I could not, I was not that person; he stopped me and told me I should tell him his fortune; I told him I could not; he said, yes I could. I told him I had not light, I must make my supper; he said, "well, I'll get a light,"

and got me one; I told him I could not tell him any thing, but what his wife had said; he said she did not know how she should make it that he would not keep house with her; he rejected what's said, and only wanted to know whether he could have the other one or not; I told him I could not tell whether he could have the other one, and he went off. I said to him, if man and wife could not live together it was trouble; Charles said he was sorry when I told him he could not get the other, and tears run down his cheeks. I never saw him before; I am but a year in this country. I don't know who he meant by the other one; I told him he could not have her, because he had one already. There was nothing said about property. This (the comb) I took out of Peggy's hair when I dressed her; pieces were sticking round her head; no person touched her except me.

*Cross examined.*—I never professed to be a fortune-teller; I did this out of a good intention to make them live together; I never took any money for fortune-telling. Samuel Heil was along with Charles;—I live with Frederic Wagener; at the time I lived with Aaron Bunstein.

*The defendant's counsel offer to prove,*—That at the recommendation of the witness, on the application of Peter Wagener's family, who have been examined as witnesses, Charles Getter was sent for to Peter Wagener's house, in order to be required to touch the body of the deceased. That he accordingly was brought and touched the body, and that the witness, on her examination before the justice, swore that on his touching the body the deceased seemed to smiled that the murderer had been discovered, and bled considerably, which was untrue in point of fact; to detract from the credit to be given to those witnesses in their stories which they have related.

The evidence is admitted.

*Witness.*—When Getter was there I did take a pack of cards to make him believe I could perceive out of the cards what I was going to tell him; I told him because he was married he could not get the other; I did this out of good intentions. I don't know who the people were that sent for Charles Getter; he was brought to Peter Wagener's, and requested to touch the body of the deceased. The mother of the deceased requested him to touch it; I don't know who was in the house; I never was there before; I was just brought there; Willour was present. I did not know Peter Wagener's family then; I know them now; I can't remember whether they were in the room at the time. Old Mrs. Lawall sent for me. If my throat was to be cut, I could testify before God Almighty that, the deceased smiled when he touched her; I also swore before the justice that she bled considerably; he touched her twice; I also swore before the justice that this was observed by other people in the house; the Doctor was gone before I touched the body; the body was laid out at this time; it was towards evening, after the Doctor and jury were alone; I don't know whether Sigman was there or not. Charles gave me a five-penny-bit, not for telling his fortune, but for a candle; my husband corrected me for this scene with Getter; Sam'l Heil and Charles stood in my way, and I was glad to get rid of them. I brought the cards from the old countries; the men played with them on board the ship.

*Re-examined by the commonwealth.*—The mother of the deceased told Getter to call upon God Almighty to witness his innocence, by showing a sign if Getter was guilty of the murder of her daughter, upon his touching the body; he touched her, but did not say it. I swore before the justice, that the mother of the deceased asked Charles to repeat the sentence before calling upon God Almighty to witness his guilt by showing some sign upon Getter's touching the body of the deceased.

The commonwealth here exhibited to the jury the pieces of comb.

*John Lawall, sworn,*—(son of Daniel Lawall.)—The distance from Philip Clauss's to Peter Wagener's house is 3 miles and 60 perches; from Peter Wagener's to the place where the body was found, is 109 perches; from where the body was found to Philip Heil's house, is 474 perches; the whole distance from Clauss's around to Heil's, by Peter Wagener's, is 5 miles and 3 perches; the distance from the body to the Bethlehem road, is 46 perches. I made this examination at the request of John Lawall, with a common Surveyor's chain; I was assisted by Peter Wagener, William Paxton, Tho's. Baumgardner, George Heckman, and Samuel Zeigler. I took the nearest and most convenient course, with reference to the road; they all carried chains.

*Elizabeth Wagener, again.*—Peggy was well and did not complain the whole day; there was nothing the matter with her neck; I did not see any thing on her; I noticed nothing about her hair particular.

*Cross-examined.*—I was not by when Charles touched the body the first time; I was by when he touched it the last time; I did not see any bleeding. Juliana Leitz does not pretend to be a fortune-teller, unless persons request it—then she does.

*John C. Mixsell, sworn.*—On the 27th February last, I was at Hellertown—I guess it was about that time; it was the day before the body was found, just the other side of Bunstein's house; I met Charles Getter coming along the road—the Bethlehem road; I took it to be him; I mentioned it the same night; I was in a sulkey; I was coming towards Easton, home; he crossed the road right behind the wheel of my sulkey; he was going across, his face westward down towards the Lehigh; I can't tell what time of night it was; I took my horse and sulkey down to Huber's livery stable; after I got into my house my wife got me supper, and I eat it; after I was done eating the clock struck ten; she got me boiled eggs, coffee, and bread and butter, for supper. A few days after, the constable came up for me to come down to Weygandt's to give evidence; before going to Weygandt's, I went to the jail; I saw Charles Getter there;



as I came into the door he walked up to me; he shook hands with me: first he asked me what I was doing there; I told him that I came there merely to see Thompson, and at the same time I thought I would come down and see him; he asked me whether I was a witness; I told him I was none, not as yet; then I asked him whether he did not recollect meeting me out there in a sulkey; and he said (in German) "Was that you?" Kisselbach was standing in the door when I asked him; then he was called out; when Kisselbach came back, I asked him over, and he denied what he had said; that is all I know.—I took the person I saw on the road to be Charles Getter; he had on blue pantaloons; the first look I did not know what kind of a coat it was; but at the second look, I thought it was a short coat; I have known Charles Getter some years; I have been at frolics where he was; the last time I saw him before I saw him in jail, he was at Clauss's, at a dance; I have known him seven or eight years; I guess the coat or roundabout was pretty much the colour of my pantaloons, (which are drab,) perhaps lighter; it was light or home-made stuff; the hat was black. When I first went into the jail Getter was reading the Bible; I asked him if he recollected meeting me the other side of Bunstine's; he said, "Was that you?" he was travelling on his common walk, as I walk, or any body else; it was a moonlight night; I had looked, and saw two miles a-head; I met him above Bunstine's, as far as it is from here to Innis's or Cooper's. My clock struck ten; two days after that, my clock was ten minutes faster than the town clock.

*Cross-examined.*—I had been at Esquire Weygandt's office previously to going to the jail, hearing the examination of the witnesses; I did not offer to swear I had seen a spook before Esquire Weygandt; I did not swear before Esquire Weygandt that I met the man the other side of Bunstine's, as far as from Esquire Weygandt's to Samuel Davis's; I said before the squire that I told Charles in jail I was a friend of his; I did not say to any body I wanted to go down to the jail and see his clothes before I would swear to it; I did not say to any body that if I had not stopped at Freeman's so long, and if I had been a half an hour sooner, I might have seen something; I did tell, that if I had been a little sooner, I might have caught him in the very act, as I was going down that lane to Peter Messinger's, as I had a bill against Peter Wagener, and one against Peter Messinger. The sun was about down when I left Freeman's house; I came from Freeman's by the way of Correll's, but did not stop there or any where; I never did deny to any body that I had David Huber's horse and sulkey; I said I did not know whether it was Huber's or Shipes's, and I would go and look. I did not say before the squire that I started from Hellertown about sun-down, and was detained at Freeman's till about supper-time; I did not say before the squire that my clock was about half an hour faster than the town clock. I said before the squire that I saw a spook, or something like a spook; but it was not there—it was when the horse run off; I said I saw something. The first time I looked at it, I did not know what it was, but I thought it was a spook; it was white; on the left hand side coming in; it was about as far this side of Bunstien's, as from here to Coburn's, or Col. Porter's; I did not say it had no head; I said if I had not shot off my pistol at Conrad Weaver's dog, I would have shot the fellow in the legs—that would have fixed him—if I had known it had been Charles Getter; I did not swear before Esquire Weygandt I was sure he had on dark clothes; I said I was not positive of it. I am married to Peter Lawall's daughter; I was married somewhere about November. I did not say before the squire one word about the person's having on a roundabout; I told the squire I thought he had a coat, but was not sure; I told the squire I was not quite sure about the colour of the coat, but I thought it was drab; I was but twice in Esquire Weygandt's office when he was examining the witnesses; I was in twice before I said I knew any thing about it. It was one or two days after Rebecca Getter's body was found, when I told John Lawall of it; he was up; the squire did not bind me over the first time I was down; I told him I wanted to go the jail first and see him, and about sun-down I went to the squire's again; I went over to Benjamin Ihrie's, and from there went up. The constable came up the same day that John Lawall did; I think I went down to the squire's the same day.

*Christian Kisselbach—sworn.*—John C. Mixsell came down to the jail one day, and asked me if he could see Charles Getter: I told him there was no admittance unless he had particular business. He said Esquire Weygandt had sent him down, and he must go in and see him to see if it was the same man. I went in with him—when I unlocked the door and he went in, he said it was the same man. He went up to Charles and shook hands with him. Charles was sitting at the table and was reading the bible. He said in German, well how does it go, Charles? He answered right well. Mixsell asked him where were you going that night when I saw you on the Bethlehem road? Charles answered (in German) "was that you." I was then called away from the door; when I came back, Mixsell and Getter were disputing that Mixsell did not see him on that road, but on the lower road. Mixsell then said, "it was you or else your ghost"—you scared my horse—I could not hold him, or I would have spoken to you. Getter said you did not see me on that road, I am sure you did not. Then Mixsell said "can you swear that on the bible?" "Yes," said he, "I can." He had his hands on the bible, but whether he kissed it or not I cannot say. Mixsell said, "you may deny it or not as you please, that I saw you on that road." Getter said, "you did not."

*Cross Examined.*—I went in the room with Mixsell. I was in the room with John, when John first spoke of the Bethlehem road, the answer was, "was that you." I did

not know that he said if Mixsell saw him it was near Clauss's. Getter said something about quarrying stone at Clauss's. Mixsell said I saw you on the upper road. Getter said if you saw me it was on the lower road. Mixrell said if it was not you it was your ghost; you scared my horse; I had enough to do with him, or I would have spoken to you. I said to somebody I was not long in at the first conversation. I never said that the first I heard they were disputing. At the first, nothing was mentioned about either of the Bethlehem roads. John asked him the first time, "where were you going when I met you that night?" And Charles said, "was that you." Mixsell said, "he thought to have spoken to him where he had been, but he scared his horse." He said nothing that I heard, about his sulkey, or Bunstein's. I was standing in the door; the expression was in German, and then I went away; that was the last word I heard; and when I came back they were disputing about the road. There was no particular night mentioned, I think.

*David Wolback—sworn.*—(Testified in German.)—On the 27th July last I worked at Philip Clauss's; I hewed timber; Charles Getter worked there; they had supper that night about  $\frac{1}{2}$  past 6 o'clock; then we got up from the table and went out on the porch; Charles run off from the porch towards Clauss's barn, the barn stands the corner towards Bethlehem; the barn is not on the road towards Heil's; I did not see Charles go further than towards the barn. I went into the house the next morning; I saw Getter again, he was at Heil's over night; I was there when the constable took Getter. I was not close by him and did not hear anything they said; I think he said he got to Heil's about  $\frac{1}{2}$  past 8; when Getter was in the custody of the constable, he said he could prove he was at Heil's house about  $\frac{1}{2}$  past 8; I did not hear him enquiring anything about his wife. I cannot say at what time we eat breakfast that morning; I worked a little before breakfast. It was about  $\frac{1}{2}$  past 6 when we went out of the house at Clauss's from supper, and then Getter went right off.

*Cross Examined.*—I think Charles had not his coat on at supper; he put it on when he went off I believe; Charles went past the shingles as far as I could see him; do not know whether he went there for his coat; the old barn is about 5 or 6 rods from the house; I know of no necessary at Clauss's; the barn at Clauss's is not in the direction of Wagener's; it was cold that night; it was cloudy at the evening; it was not so very cold, it was so similich; it was not so very warm; it was a little cool; it was cloudy towards evening; it was a little cool in the evening, but at night it was very cold and windy. I was at Clauss's over night; I did not see Getter come back to Clauss's that night; I think it was a blue cassinett wamus he had on; he had an under wamus; I know of but one.

*David Miller—sworn.*—I worked at Philip Clauss's on the 27th of February. I heard Getter say on Wednesday he was going home at night. I saw him go away from Clauss' off the porch, 1-4 past 6 o'clock, by Clauss's clock; I did not see which way he went; I staid at John Paulus's; did not stay at Clauss's; I saw Getter when the constable took him; I did not hear him say anything, I was within about a rod and a half when the constable took him; we both worked at quarrying stone; Getter worked along with me; I did not hear what passed between him and the constable; I heard the constable say that he was his prisoner: he asked him if he did not know that his wife got killed the night before; he said he did not know it; he did not say anything more that I heard; it was between 4 and 5 o'clock in the afternoon when the constable took him.

*Cross-examined.*—Willour did not tell him where she was found, as I heard; there was no inquiry made how she was killed, and nothing said about it; they went from me towards where Daniel Wolback was; I did not notice a change of countenance when he was taken.

*Matthias Joseph—sworn.*—I worked at Philip Clauss's on the 27th July, at carpenter work. Charles Getter was there at noon; I asked him if he would go with me down to Hackman's, he did not say he would or would not; I told Getter there would soon be snow and we could go a-sleighing; he said he did not care anything about it; Hackman's is out the old Bethlehem road from Clauss's, and the road turns into Brader's, and down to the Lehigh. Hackman's may be a  $\frac{1}{4}$  or  $\frac{1}{2}$  mile from the old Bethlehem road that is; I did not tell Getter what I wanted to go to Hackman's for; Getter was in the kitchen when I went off, I went with Melchior Transue; Getter stood at the jamb of the chimney when we went out, and looked after us: this was after supper; immediately after supper we went off; I did not see him again until next morning; I was at Melchior Transue's and Hackman's in the evening; I went back to Bill Transue's and there I staid all night; Wm. Transue's may be 3-4 of a mile from Clauss's; Transue's from Hackman's is near 1-4 of a mile. I told Getter it looked for snow; I do not know whether I said anything to Hackman about mending shoes; as soon as twilight I quit work and sat down to supper; I ate supper by candle-light; I worked there the next day, when the constable took him.

*William Transue—sworn.*—(Testified in German.)—I worked at Philip Clauss's on the 27th July last; Getter was there; as soon as we eat supper I went home; next morning I went down again, but Getter did not come till we sat at the breakfast table; when he came in, Mr. or Mrs. Clauss asked him whether he went home; and he said no, he did not get so far, he was at Hill's; the constable asked us, (Getter was by,) if we knew what had happened, and I said no; then the constable said Getter's wife was murdered, and Getter said he was innocent; when I eat supper at Clauss's on Wednesday evening it was about 6 o'clock; I worked as long as I could see. If I wanted



to go the nearest road to Heil's, I should turn in a little below my house in the woods. I began to work on Monday and worked till Wednesday, and Getter worked with me.

*Cross-examined.*—When Getter came back the next morning I saw nothing unusual in his conduct or manners; we worked about 10 rods apart, I at hewing timber, and he in the stone quarry.

*Christian Willour—sworn.*—(Testified in German.)—I went out to Philip Clauss's to take Charles Getter; he was in the stone quarry shovelling ground, then I walked up to him and took him by the left arm, and said, Charles Getter you are my prisoner for a murderer—your wife is killed and suspicion is, that you done it; then he said, is she dead, and I said she is; then he said I did nothing to her, I did not see her since Saturday; I said to him he must go along; he said I will go with you, and I said, you must go with me; he said he must go into the house and get his wamus and I should wait till he came out again; I said you may get your wamus but I will go with you; then we went into the house, he took down his wamus, put it on, took a segar out of his hat, lit it, and said now I am ready to go with you, then we went off together from Clauss's to Wagener's. He never asked me anything more about his wife than what I have said; when we got to Wagener's I asked him whether he wanted to see his wife, and he said yes. As much as I can remember he had a green under wamus on at the quarry; when he went into the house he put on a round-about, lindsy-woolsy, coloured with walnut bark, black pantaloons, and black hat—he was brought to jail in the same dress.

*Cross-examined.*—Thomas Willour, George Schwitzer, and Abraham Wagener, were with me when I arrested him; he could see me about 4 or 5 perches off; when I took him, I did not tell him that it was said he had been seen there that night; I told him his wife was killed last night, and suspicion rested upon him.

Court adjourned till 8 o'clock to-morrow morning.

*Thursday morning Court opened at 8 o'clock, Aug. 29.*

*Witness.*—There was nothing said to him by any one of the company on the road from Clauss's to Wagener's about touching the body, as I know of. I had a warrant out for him: I did not read it to him; I only said to him, he was my prisoner as a murderer; I mentioned nothing about it except to Mrs. Clauss, and two other women in the house asked me when he went into the house to get his wamus, about the circumstances, and I told them; I took him to Wagener's of my own notion, it was the nearest road across the fields to Easton; Philip Clauss lives on the lower Bethlehem road; Peter Wagener lives a quarter of a mile north of the upper Bethlehem road. The two roads may be a mile apart where the road from Wagener's comes into the Bethlehem road; I do not know whether the straightest and nearest road was to come on the Bethlehem road; I did not tell Charles that I must first take him to Wagener's before I took him to Easton; I had to cross the upper road before we got to Wagener's. On returning, Getter told me he could go a nearer road to Wagener's over the field—the road I did not know before: he did not ask me for leave to go home to his sister's when I took him at Clauss's; when I went from Wagener's to Clauss's, Abraham Wagener went with me, he said we will go straight; I did not ask who lived either here or there; when we went out we left Clauss's more at the right hand, when we came back, more to the left; Charles said we came out too low on the road, we should keep further up, and we started for Clauss's right over the fields. On the upper Bethlehem road we passed and stopped at one Orner's and drank—I think they were building a barn; then we crossed over the road through the fields to Wagener's; I told Charles at Wagener's if he wanted to see his wife he should go with me, she laid up above, some one uncovered her and said Charles come here and look at her; he came there and saw her; then I asked him, Charles would you like to touch her; he said I do not care, and touched her on the left cheek, then he asked whether he should touch any where else, and I said not on my account; there was more people in the room at the time: then her mother came in, she said here stands the murderer—he murdered my child, he should come there and touch her, and God Almighty should give a sign that he was the murderer; he touched her at the chin, then we went down; I saw nothing of her bleeding which Juliana Leitz swore to; the mother said Charles should touch the body; and repeated the invocation before mentioned; Charles evinced no disposition to resist any thing after he was taken; I put Charles in jail the same evening.

*Re-examined.*—The people at Clauss's were much alarmed; I told the women what had happened; Getter's wife was murdered; that's all I told them, and went off: Wagener's house is in Forks township, Northampton county. Clauss's house stands off from the lower Bethlehem road, on the right hand side going out, between the two Bethlehem roads, about as far off as from here to Innis's corner. When we came from Wagener's, about a mile from Easton, Getter asked me whether I thought he would come to jail; yes, says I, nothing else.

*Philip Clauss, sworn.*—(Testified in German.)—Charles Getter worked for me, and quarried stone on the 27th of February last; we had tea between 6 and 7 o'clock; we were at the table when he went away; the next morning when we were at breakfast, he came. I asked him then, where was you last night? he said, I was at Heil's. When we were done eating, we went to the quarry; there was more along; I was not at the quarry, when he was taken; can't say the time particularly when they fetched him.

*Cross examined.*—He eat dinner there; I did not discover any alteration in his conduct or appearance that morning.

*Adam Clauss, sworn.*—(Testified in German.)—I am the son of Philip Clauss; I ate

supper with Charles that night, 27th of February, between 6 and 7 o'clock; it was not quite dark when we quit working; I did not see Charles go away; I was at supper when I missed him; I did not see him again; I can't say how long he worked for my father, but a good while.

*Cross examined.*—I saw Charles next morning at breakfast; I did not discover any thing unusual in his conduct or appearance.

*Caroline Demur, sworn.*—(Testified in German)—I was at Philip Heil's on the night of the 27th of February, and saw Getter there; he came there between 8 and 9 o'clock; it was nearer 9 than 8 o'clock, when he came there; he came and asked whether Samuel Heil had come home yet; the old man said yes, he came home on Monday. I asked him where he came from; he said from Philip Clauss's; I asked him which way he came; he said he came by Jonas Hackman's, through the valley; I know no more; it was between 8 and 9 o'clock; I can't say how near 9. He staid at Heil's that night; he might have been up ten or twenty minutes before he went to bed; I was not long up after Charles went to bed; I do not remember what time I went to bed that night; I did not hear the clock strike 9 o'clock; they were all up except Samuel, he was in bed when he came there. He went up stairs to sleep; he had on a pair of black cassinet pantaloons and a brown lindsey roundabout, looked more gray than brown; he had on a black hat; I can't say any thing about the shape of the hat; I have not heard him say any thing about his living with his wife, either way.

*Cross examined.*—He looked when he came in as he did at other times; I observed no difference of appearance; I don't know whether he was warm or not; I did not observe that he was out of breath, or in a state of perspiration more than at other times; I never heard him say any thing about his wife; I don't live at Philip Heil's now; I saw Getter go out in the morning; it may have been at six o'clock; I was up and Samuel Heil; it was about day-break when he went.

*Philip Heil, sworn.*—Getter came to my house on the night of the 27th February last, it was after 8 when I wound up the clock; he came in maybe five minutes or more after I wound up the clock; I asked him which way he came; I asked him if he came by Brader's; he told me no; he told me he came down through the hollow by Jonas Hackman's; I asked him if he saw any thing of young Brader and his wife; he said no; he asked me if Samuel had come home; I told him yes, on Monday; he asked me where he was; I told him in bed; I asked him if he would like to see him; I asked him if he would go any further to-night; he said he believed not; he said he would like to see Samuel; I told him he could if he would go to bed, and after a little he went to bed with Samuel; I asked him, before he went to bed, when he saw Peggy last; he said not since Saturday. That is all I can remember. Brader then lived up at his father's, and he and his wife had been down on a visit that evening; he married my daughter; she had staid at my house a couple of days, and young Brader came for her, and took her home that evening. Brader and his wife went away from my house that afternoon about four o'clock. I have heard Getter say he would not live with his wife; he said so twice; I said to him, she was of a nice family, and he should live with her; he said he would not live with her for all that. Molly Hummer did not live at my house; she worked there one week, and she worked one week there for another woman. Samuel had been up to Mount Bethel; he took Molly Hummer home; Getter brought Molly Hummer down from Mount Bethel; he took her to my house; she is no relation to me; she is not related to my brother Jacob's family. From my house to Hackman's, I suspect is about three miles; I sat by the stove when Charles came there in the evening; my wife had just set by her work to go to bed; it is between a quarter and a half a mile from my house to Lawler's; my house is three stories on one side; it is a bank house; my clock stood in the middle story in a room; we were sitting in the lower part; we sleep there; no person sleeps in the room where the clock was; Samuel slept in the upper part; I was up when he went away in the morning; I called him at 6 o'clock.

*Cross examined.*—It was before Getter was married when he brought down Molly Hummer; he brought her down to nurse my daughter. Mrs. Benjamin Brader, my daughter and her had been acquainted before; I had lived in Mount Bethel before 21 years. To go to Hackman's from my place, I go by Mr. Hope's; I live about half a mile below Coleman's Dam; between my house and the dam is a Canal Board; it is 3 miles from my house to Hope's by that; one board is above my house, and the next is above Hope's; I can't say how far Hackman's is from Hope's; I wound up the clock about half past 8; then I came down and told my folks to put away their things to go to bed; my woman set down her work, and after a little Charles Getter came in; I could not see that he was warm, or in a state of perspiration; I did not see any thing unusual in his appearance at all; he was in the habit of being at my house; when he worked there, he staid all night; that evening he staid there; other nights when he did not work there, he did not stay there; I know him very well; I never heard him in any conversation about his wife, nor use any threats of violence towards her.

*Re-examined.*—My clock runs 24 hours without winding it up; every evening I wind it up before I go to bed; it is according when I go to bed that I wind up my clock; I took the candle with me to wind up my clock, because I might spoil it by winding when it was about striking; the works of the clock are brass.

*Cross examined, again.*—My clock is a pretty good one; there is no mistake in it; when I went up to wind the clock the evening Getter was there, it was running; the clock



was right with the town clock; she is not five minutes out of the way from the town clock in half a year. I carried a watch about six or seven weeks ago, but do not now.

*Jonas Hackman, sworn.*—(Testified in German)—It is about a mile from my house to Philip Clauss's; it is about three miles from my house to Philip Heil's; my house stands about a rod from the road; my shop stands close by the road; I was at home on the evening of the 27th of February; I was no where else than home at night the whole week; I am acquainted with Charles Getter; he has been at my house often; I did not see Getter on the night of the 27th; a person going along the road must have passed within a rod of my house; Getter is acquainted with all my people; I can't tell how late we were in the shop that evening; I usually go to bed at 9 o'clock, and my shop boys had not got into the house when I went to bed; Charles was not at my shop often since he was married; only a couple of times; I mean by a couple, more than one, but not so much as four or five times. My dog was fastened close by the road; there was only the fence between the dog and the road; he is a watchful dog at night; the dog did bark between 7 and 8 o'clock; I did not hear any body go past. I have said before the squire, that my dog barked most of the time, but did not say always when people passed; my dog is a watchful dog at night; he does not bark very often at night; he does not bark at my family, except they are coming back after being away from home.

*George Hackman, called again.*—I was in my father's shop the night before the body was found; I was in till between 8 and 9 o'clock; Charles Getter was not in that evening; he used to stop there when he went by; I can't say how often I have known him pass without stopping; he often stopped when he passed; sometimes he did not. We had a candle in the shop; Peter Lawall and myself were in; nobody came in that evening; if any body did I do not recollect it; I think it is near a mile from our house to Clauss's, and about three miles to Heil's; it is the nearest way to go to Heil's from our house down the Lehigh; I did not hear any body go past between 6 and 9 that I know of; the dog barked on that evening; I can't say what time; I did not look out then.

*Cross examined.*—From our house down to Hope's is about one-fourth of a mile; it is about three miles from Hope's to Coleman's Dam.

*Thomas Hope, Esq. again.*—My stable is one-fourth of a mile below the 40 mile board; the 41 mile board stands at Andrew Smith's; the 42 a half mile or more above the chain of the dam; from the chain it is three-fourths of a mile to Heil's; it is full three miles if not more from my house to Heil's; the 43 mile board stands just below the dam on the canal, below the dam 100 yards; Heil's is about five-eighths of a mile below the dam; the chain is about one-eighth above Coleman's. On the night of the 27th of February, I was not at home; it is very near a mile from the tow path at the lock near my house, up to the road; it is always called a mile and a half from my house to Clauss's; it is full half a mile from the tow path to Hackman's, and a full mile from Hackman's to Clauss's. The night of the 27th it was somewhat cloudy; I was up till 9 o'clock that night at Henry Martz's; it was not very cold or over warm that night for the time of year.

*Cross examined.*—The reason why I know it was cloudy is, we were talking before the door about a change of weather, and I took notice of the sky. I very often passed by Hackman's in the evening, and sometimes his dog would bark and sometimes he would not.

*Peter Lawall, again.*—On the evening of the 27th, and the evening before, I was at the shop of Hackman's; Getter was not there; Getter was in the habit of coming there pretty often; the dog was not very sharp; he was like dogs generally, not very cross; I did not hear any person pass that road; it is about a mile from Clauss's to Hackman's; it is about one-fourth of a mile from Hackman's to Hope's.

*Cross examined.*—It is a little further from Hackman's to the canal than from Hackman's to Hope's; Hope's house stands a little north on the canal; Hackman's dogs' name was "Bull." I came to Hackman's in January; I lived there before that a while; my home was before at Adam Wagener's; Hope's house may be 10 rods from the canal.

*Jacob Weygandt, Esq. again.*—I find by my notes, Getter said that he left Philip Clauss's at 7 o'clock in the evening; he said he went from there to Philip Heil's; did not meet any body on the road, and stopped no where; he said he got there about half past 8 or 9, and staid there till morning when Heil's got up; said he slept with Samuel Heil. He started from Heil's to go to work, about day-break, at Philip Clauss's; said Peg sent him no word she was going to move that day; she had promised to let him know when she would move; that he had not been with her since last Saturday; he did not know she was dead until the constable took him; he said he promised on Saturday he would live with her; when he left Clauss's to go home, he went past Hackman's; he saw no one on the road; Philip Heil, his wife, and his four boys, were there when he got there; there was also a German there, whose name was John; Samuel Heil had gone to bed; he went to bed soon after he got there; the German staid there all night; that he had his home there; he had agreed to help Peg to take her things out when she moved if she gave him notice of the time; said he would not go to Wagener's any more; the rest of Heil's family went to bed not long after he did; he had his home at Lawler's; he was often at Heil's, and the reason he went to Heil's was, he had his watch at Easton, and Samuel was to bring it out. He did not know that Samuel Walter knew any thing about that Peggy was going to move; he was at Walter's on Monday, and Samuel Walter then knew nothing about Peggy's moving; he had no bargain with Samuel Walter for the house; she had rented it before he knew any thing about it; he was willing to take the

house; he quarried stone at Clauss's; he worked there when the constable came there; he was not in Easton yesterday, (the day before the examination at my office;) he said he did not see Peggy since last Saturday, except since he saw her at Wagener's murdered. This was the examination taken on the 28th of February; I saw him on the 1st of March. The reason I saw him in jail on the 1st of March, was because some one said he had his finger cut, I went to see.—The family were in the house; he had hurt his finger in the stone quarry, and had it tied up; his finger I think was not tied up at that time; he had his watch at Easton, and the night he got to Heil's, Samuel said he was going to Easton, and he told him to bring his watch; he did not go to Heil's for that purpose, but that he often went there; he said he sent word he was coming there again that week; he had his home at Lawler's, where his mother lived.

*Cross-examined.*—I understood from John Lawall that they had examined Getter; I was requested to go along with Charles Hay, Peter Smith and Lawall, to examine Getter at the jail, he was examined thoroughly, he was stripped naked, the seams of his coat were examined, his body was examined fully, I was in and out occasionally, the object was not for scratches or that kind, I discovered no marks or scratches upon him, or about his clothing that was a matter of remark, the mark on his thumb appeared to have been done sometime before. When I examined him in my office he answered the questions promptly, he submitted quietly in jail to the examination, he had no counsel at my office, there was no person present taking any interest for him, it was the evening he was bro't there, Willour had him. Mr. Lawall put some questions and requested some to be put; I told him upon the evidence of David Wagener I should commit him for trial, and I did; he said he was not guilty of the charge; I told Getter that David Wagener had sworn he had seen him in company with his wife through the window that evening. I do not think any thing occurred in the course of the examination but what I have written.

*And'w Rheinheimer, sworn.*—I saw Getter come up the road by our house on the morning Peggy was found. I was at the well washing myself. I went in and dried myself and went to the window looked out and saw Charles. When I saw him he looked up towards the house, and that way he looked the whole time I saw him. There was another person with him. I did not look so particular to his face as to observe any thing. After that I went back again from the window and thought no more about it. I lived at Andrew Smith's a mile and a quarter above the dam, on the hill on the shore about six or eight perches from the tow path. I was at home the night before I saw Getter go up, and I saw nothing of Getter.

*Cross-examined.*—The house is considerably higher than the tow path there, there is a very steep hill from the river up to the house, the house stands about 12 feet back from the brow of the hill, and then it pitches down steep, I believe it was a cold morning.

*Re-examined.*—From Coleman's dam down to Heil's is something between one half and three quarters of a mile, and about two miles down to Smith's. It is about one mile and a quarter from our house to the dam, the chain is not 200 yards above the house or above the dam.

*Henry Mach, sworn.* (Testified in German)—I had conversation with Charles Getter in jail. He said the constable came to the stone quarry for him, about his wife that she was killed, and when the constable told him, he could not believe it was true; he said if he had to do it again they would not have caught him in the stone quarry.

*Cross-examined.*—This conversation was a few days after he was confined, he said several times he did not know for what he was hopped. This was in June sometime before hay-making, not very warm. Next he told me if he had known it would go so, he would not have married her.

Court adjourned till 2 o'clock, afternoon.

*Thursday afternoon 2 o'clock, court opened.*

*William Paxton, sworn.*—I was with John Lawall the Wednesday after Charles was taken. We went from Lawall's to Philip Clauss's, Philip Clauss's clock was three minutes faster than Mr. Lawall's watch. Mr. Heil's clock was seventeen minutes faster than Mr. Lawall's watch. Philip Heil's clock was a half an hour faster than Peter Wagener's clock. Heil's clock was seventeen minutes faster than Mr. Lawall's watch. Then we came to Easton and compared Lawall's watch to the town clock, and it was twenty minutes slower than the town clock. Then we compared Lawall's watch with the town clock and that is the way we got the difference; Wagener's clock was a half an hour faster than Heil's, the calculation was made in my presence; I was with John Lawall at the time he made the paper.

A paper was produced to refresh his memory of the difference, the paper was part of it made by Lawall and part by Squire Weyandt. *The Court decided,* unless the paper was made in the presence of witness, and witness read it, and found it agreed with the truth as he saw it, it would not be evidence, and he could not refresh his memory from it; but if he saw the calculation made upon the paper, he might refresh his memory by referring to it.

*Cross-examined.*—I don't remember how much difference there was between John Lawall's watch and Wagener's clock. Can't tell as there was as much as three quarters of an hour difference, I was in the room at Philip Heil's. Mr. Heil's wife and a hired man were in there with me, the hired man was a Dutchman, I don't know his name.

*John Lawall, Jr. sworn again.*—It is fourteen perches from Peter Wagener's to Adam Wagener's; six perches from the house of Adam Wagener to the road; Peter Wagen-



er's house is one and two-tenths of a perch from the road, ten perches from where the cross road enters to Bunstein's, thirty-two perches from where the Bethlehem road enters down to George Eidleman's. I measured it with a surveyor's chain.

*Cross-examined.*—Thomas Baumgardt and Samuel Zearfass helped measure it; at the request of John Lawall I measured it. I am son-in-law to Mr. Lawall, and clerk in Joseph Shnyder's store. I had Esquire Gross's chain.

*John Lawall, sworn.*—I went to Philip Clauss's. His clock was three minutes faster than my watch. From there I went to Philip Heil's. His clock was seventeen minutes faster than my watch. From there we went to Peter Wagener's. The town clock was twenty minutes slower than Wagener's. My watch was twenty minutes slower than the town clock; I made no memorandum of the difference at Peter Wagener's. When I came to Easton I did make one there. I made this examination of the time on the Wednesday following Getter's being brought to jail. On the twenty-second May I went to the jail. I went up to Getter, shook hands and asked him how it went; he said it went very poorly. He told me it was hard to be in such a trouble; I told him I thought the greatest trouble one had, was what he made himself; he said he had not made himself this trouble; I told him I had not put him in this trouble. I told him if he had not been at Bunstein's that Saturday night perhaps he would not have been in that trouble. I told him if he had not been at Bunstein's and made arrangements to move on the week following, there would not probably have been that trouble; and he denied making any arrangements with his wife. I asked him if he had not sent for his wife on Saturday. I asked him if he did not send Bunstine's wife after her, and he said yes; I asked him if he did not make any engagements with his wife to move on that week, and he said yes; then he said they had not appointed a day. On the first of March I was in jail, I asked him if the clothes which he had on when he was bro't to jail were those he had on all that week, and he said yes; (we talked in German.) It was a linsey roundabout wamus between red and yellow, color'd with walnut bark, his pantaloons were of a dark color, he had on a black hat rolled up at the sides; the field where the body was found was in Forks township, Northampton county.

*Cross-examined.*—I was the active person in part of this prosecution, I retained the counsel to assist the prosecuting attorney. I did with Joseph Snyder come to your office (Mr. Porter's) to employ you to assist in it. I went the second time to see Getter, I did not go there to try to pump any thing out of him at jail. I was there when he was stripped, saw no marks. Peggy would have been thirty-two years old this last April. The bank at the road where her body was found is considerably higher than at other places. If a person was standing up at the place where the body was found they might be seen for a considerable distance both up and down the road; when I was on the way home at the road where my sister was found I could not see her. There was a good deal of difference between my watch and Wagener's clock, but can't say how much, we calculated there was a half an hour difference between Heil's and Wagener's. We made it out at Wagener's, and I carried it to Easton in my mind. We did not put it together at Esquire Weygandt's; I am sure this memorandum is correct.

*Re-examined.*—My sister Mrs. Getter was healthy last summer, she was not often in my presence.

*Elizabeth Wagener, again.*—Our clock was not altered from the time Peggy was found until Mr. Lawall came there with Paxton, it was not altered at all about that time that I know of, it is a good clock, it is an eight day clock.

*Cross-examined.*—The clock was always right as far as I knew, never compared it with the town clock.

*Philip Clauss, again.*—I have an eight day clock, it holds time pretty well. I did not move it for three or four weeks when they were quarrying stone, it had not been altered in two weeks when Lawall was there, I have a sun dial or compass mark, and always look at that, and when it goes right I don't alter it, it was not altered when Getter was there.

*Cross-examined.*—I saw Charles Getter's finger tied up at the quarry. We took breakfast a little after six o'clock. A little after sunrise we had breakfast. I can't say but it was after seven o'clock when we took breakfast. The carpenters worked awhile before breakfast.

*Philip Heil, again.*—I did not alter my clock about the time Lawall was there. 27th Feb.—Moon set 31 min. past 12. Sun set 5 o'clock 32 min. 28th—Sun rose 6 o'clock 27 min.

*William Transue, again.*—On the 28th we eat breakfast at Clauss's, about 7 o'clock.

The Counsel for the prosecution here rested.

Mr. Rees then opened the case on behalf of the prisoner. He said that they would adduce the testimony of medical gentlemen of judgment and experience, who would affirm, that from the description given by Dr. Gross, of the condition of the body of the deceased, there was great doubt, whether her death was caused by external violence. But that if they should fail in establishing this, the first position upon which they would rely, they would prove the innocence of the prisoner by showing *an alibi*. They would exhibit testimony of his being present, at places distant from the spot where the alleged murder was committed, at such times on the evening of the 27th of February, as to render it morally impossible, that he could have been the person seen on that evening, in the company of the deceased.

[This is a mere syllabus of MR. REES's opening. The reporter was unavoidably absent from Court during its delivery.]

*J. Weygandt, Esq. called again.*—David Wagener said before me, that when he first saw Getter his back was towards him—he then looked around, and one of them said “come,” and he thought it was Getter, but was not sure. John Kindt testified before me about his conversation in gaol with Getter—he said, “Charles Getter told me in gaol that Sam Heil wished him to come down on Wednesday evening, to go to a vendue in Williams township next day; and as he had a clean shirt to put on, at his brother-in-law’s, he thought he would come down. He said that the reason why he did not go down and put on a clean shirt was, that Samuel Heil urged him to come to bed.” He had been examined before.

John C. Mixsell was at my office several times before he was examined; he talked about his trip to Hellertown, and his being detained at Freeman’s. My impression is, that he spoke about certain bills, that he had to collect on the road leading down to Wagener’s, and if it had not been so late he might have met him there. I have some recollection of his saying before, something about meetings somebody beyond Bunstein’s, but did not say who it was, and that on this side he saw this spook. He did not profess to know the person he met, and talked about his horse being frightened. He testified before me as follows, “I started from Hellertown about sun-down, or a little before, on the 27th February. I had one bill with me against Adam Wagener, and one against Peter Wagener, and was going there—was detained at Freeman’s until after supper time, but did not eat there. I got this side of Bunstein’s and concluded it was too late to go to Wagener’s: about as far as from here to Samuel Davis’s,\* on this side of Bunstein’s. I met a man that I took to be Getter—he was going towards Bunstein’s, and appeared to be crossing the road towards the Lehigh. After I had supper, my clock struck ten, and was about a half an hour faster than the town clock—it might have taken me three-fourths of an hour to come from there to Easton. I saw Getter in gaol and shook hands with him and said, Charles is this you? he said yes. I then asked him how he got there, and he said they had it reported that he had killed his wife. Getter then asked me whether I was a witness; I replied that I was not and was a friend of his. I asked him if he recollected meeting me on this side of Bunstein’s, in a sulkey—Getter asked, “was that you?” and began to laugh. He then asked me where I had been, and I replied at Hellertown. After this Kisselbach came in, and I asked him over again about this, and he denied it. Kisselbach was not in when I talked to him first about seeing him—I wanted Kisselbach to listen, but he did not—we spoke loud. He said, I am certain in my own mind it was Charles Getter; I will swear. I think he had on a coat—am sure he had—of dark cloth. Charles Getter is the very man I met.” I think the spook story was one of his first conversations. I did not bind him over when he first appeared, but sent him word afterwards to come down; I then bound him over: it may have been two weeks afterwards. He said, “Getter had on a coat, and you will find that Wagener is mistaken.” He said the spook was dressed in white and had no head. Francis Gwinner was in the office and looked at me and laughed, and I then laughed too. He said you need not laugh about it, and began to laugh too. I don’t know what he came to my office for that time—it strikes me there was something said about shooting.

*Andrew H. Reeder, Esq. sworn.*—I was in Esquire Weygandt’s office a few days after this death. John Mixsell was there also. He said that he was very sorry he had been detained. That if he had come along a little earlier, he might perhaps have seen Getter. I remarked to him that was not very probable, for that if Getter had been there, the ground was frozen so hard that he might have heard him coming a quarter of a mile and would have either remained in the lane or crossed into the woods until he had passed. He said he thought not, and that if he had not been detained, he would have come along about the right time and might perhaps have seen him. The substance of what he said about the bills is this:—That he had intended to take some bills along, which would have taken him down that lane, but had not done so. My recollection as to that is not so distinct.

*Francis A. Gwinner, sworn.*—I heard Mixsell say he had been at Hellertown and had come along that road that evening. I think he said he came along about ten o’clock, but I can’t speak positively as to that. He did not say he had met any person. I saw him another time in Esquire Weygandt’s office. He said he had met a man the other side of Bunstein’s going the other way towards Bethlehem. He said this side in the woods, he saw a *spook*—something in white, and without a head. I looked at the ‘Squire and smiled. He said you need not laugh. One evening I was at Mr. White’s, and John Mixsell came in, and he said he had been to the gaol and was talking to Getter about meeting him, and Getter said—was that you—and he told him yes, you are the very damned rascal that killed your wife.

*Alexander Eagles, sworn.*—John Mixsell was in my shop the day after the murder was committed or the day after that, and said he came past there about the time the murder was committed, and wondered that he had not seen something of it. I do not know that he said any thing about seeing Getter.

*David Huber, sworn.*—John Mixsell got a horse and sulkey from me on the 27th of February. It was after nine when I went to bed. Sometime after I was in bed he knocked at the door. I looked out of the window and called the ostler to take the horse to the stable. To the best of my recollection this might have been between the hours of ten and eleven.

\* About two hundred yards.



*Cross-examined.*—The horse and sulky was brought before my door. I had been asleep. I guessed at the time. When I looked out it was all quiet and still in the street.

*Benjamin S. Shultz, affirmed.*—John Mixsell told me he had not Huber's horse and sulky that day, and he could prove it. That he had Sheip's horse and sulky. He called on me and asked me to go with him to David Huber. I asked him what for. He said I would see when we got there. I went and Huber was not at home. He seemed so certain that I thought perhaps I had misunderstood it. We went to Mr. Snyder's, and he repeated it there. Mr. Sheip keeps a livery stable. He and Mr. Huber were in partnership a couple of years ago. One stable is at the corner of Hamilton street and the other at Burt's.

*Rachael Bunstein, again.*—I have seen Juliana Leitz take money for fortune-telling, from two persons—Charles Getter and Samuel Heil.

*Samuel Heil, sworn.*—Charles Getter came to our house on the night of the 27th of February. He came to bed to me. He asked me what the Mount Bethel folks had said about him up there; I told him they said he might come up when he pleased, he would be as welcome as at any time before. I asked him when he had seen his old woman last; he said not since Saturday night. I asked him which way he had come; he said he came down by Jonas Hackman's, through the hollow. He asked me if I would not fetch his watch along from Easton; I told him I would; I told him he had better stay and go with me to Easton, and fetch the watch himself, and then in the afternoon we would go to the vendue; he said he could not, he had to go to Philip Clauss's and help to quarry stone. Charles was not warm. I was bound over to appear here on the part of the commonwealth. I did not see any thing unusual about him; he came to bed as he did before, and I did not notice that he was warm or any thing. I don't know what o'clock it was,—about 6 o'clock in the morning he went off. I discovered nothing during the night. We had no conversation in the morning before he got up. Charles Getter slept at our house pretty often; Benj. Brader told me Charles was coming there that week—that Charles had told him to tell me. He slept at our house every time he worked there, and sometimes before; I did not miss him from bed that night.

*Cross examined.*—It was Jacob Heil's women and Andrew Snyder's women said he would be as welcome as before. I took Molly Hummer up to Mount Bethel the Sunday previous to the time Charles was at our house; Charles was at our house when we started. He did not say any thing about his watch on Sunday. I returned from Mount Bethel on Monday towards night. I did not say I would rather give \$50 or the best horse in my stable, than be examined as a witness;—I said I would as leave give fifty dollars as to give evidence in this case, as I was never before a squire before. I cannot say whether this was before or after I was examined before Esquire Weygandt. I never requested any person not to say that Charles Getter had been at our house on the 27th. I never said that when Charles Getter came to our house, they were all in bed but the maid. The maid came to the door and said C. Getter was down in the lower room; I told her to tell him to come up. I never said to any person he should not say that Getter was at our house over night, and then say it made no odds for it would come out for all. I think Getter had slept at our house through the winter and fall when he did not work there. I can't tell where he worked when he slept there. He always slept with me. I have been attending on the part of the commonwealth the whole week. I have not been subpoenaed in behalf of Charles Getter.

*J. Weygandt, again.*—I think Juliana Leitz said before me, that it was the mother of the deceased that made the invocation, and not that she requested Charles to repeat it. I considered her testimony as a trifling matter.

*John Brader, again.*—I saw Charles the morning of the day when the body was found. He came along on a kind of a trot. It was pretty cold. My wife asked him where he was, and he said down the Lehigh; she asked him whether he was down at Anthony Transue's; he said no. He went on pretty fast, and did not stop much; was pretty much in a hurry—appeared pretty lively—was more pleased, it seemed to me, than he was before my wife asked him if he remembered when he used to go to see Peggy Lawall. He was talking a little bit, but I could not hear. This was a little after sun-rise. It is about three-quarters of a mile from my house to Clauss's; he would not go past Hackman's in going that way to Clauss's. As much as I know, he always came that way when he had been down to the Lehigh. I don't think there is more than five or six rods difference; I think it is nearest to go by my house.

*P. Heil, again.*—After Getter came down I asked him if they went out to work at Clauss's before breakfast, and he said no; I said he would be too late for breakfast; he said no, he could get there to breakfast. I asked him what time they eat breakfast, and he said sometimes at sun-rise and sometimes after. Then I told him he would have to hurry on or he would be too late.

*Francis Gwinner, again.*—Mixsell said the man he met had on a coatee.

*Dr. Samuel C. Gwinner, sworn.* I resided in the Alms House at Philadelphia three years, and the better part of one year in the Hospital. I have seen a number of cases of convulsions of different kinds, and some cases of death by them. I have seen death from apoplexy. I have seen the livid and swollen appearance of the head and face in cases of death by apoplexy; the distension of the blood-vessels in the neck and head have been very much distended in every case of apoplexy that I have seen. The eyes usually distended and protruding; the membranes of the mouth and cord purple; the lips livid, purple colour. Frothing at the mouth a very common symptom,—present in

every case of genuiue apoplexy that I have ever seen. The froth comes from the lungs,—extends throughout the windpipe. I have frequently seen spots in various parts of the body, in cases of sudden and violent death; in persons dying of any violent disease, such as convulsions, I have generally found the heart and lungs distended with blood. I would suppose it necessary to examine the brain; it is the first organ examined in case of apoplexy; we commonly expect to find the seat of disease in the brain. I would not consider an examination perfect without an examination of the brain. With the exception of the violence discovered on the neck, the description is very similar to those of apoplexy which I have seen. I am not able to form any opinion about the marks described by Dr. Gross, as I have never seen a case of strangulation by the hand grasping the throat; I cannot say how deep the prints of the finger marks would be left; I can only speak from authority, that there should be distinct marks of violence of the fingers; others say it may occur without those marks. I am not able to state whether a pressure at one side, and no pressure on the other, would stop respiration. The upper part of the lungs is a small slit;—the windpipe itself I suppose about as thick as your finger. From the description given by the surgeon, I should have doubts of the cause of her death; I would not undertake to say what was the cause of her death. I saw several cases of suicide by suspension: no examination,—only observed the external appearance. It is usual to examine the dead bodies at the Alms House. The head lying lower would add considerably to the lividity of the appearance. I do not know that I have ever seen a case of apoplexy in females, pregnant or not; but they certainly occur, if Dr. Dewees is to be believed; he describes the cases. There is naturally in a state of pregnancy, a large quantity of blood sent to the uterus; it increases gradually in quantity from the first month up.

Strangulation may produce death without occasioning apoplexy, necessarily. The first effect appears to be merely mechanically pressing on the wind-pipe, and excluding the air from the lungs: The consequence is, that the blood does not undergo that change which is necessary for the support of the functions of the brain. Instead of arterial blood, black or venous blood is sent to the brain; the heart continues to act and sends the dark blood to the brain which destroys its functions, and this being sent back to the heart, its functions cease. This is the view given by a number of French anatomists—*Bichat* in particular who gives this view of it. Extravasation in the brain is supposed to be owing to the rupture of the vessels, or a fusion upon the brain—vessels being much distended, pour out the blood from their openings without rupture. A fall on the back of the head might produce apoplexy from fusion—a number of such cases.

*Cross-examined.*—I do not know that it is a commonly received opinion that death by hanging is produced by apoplexy—it may or may not be present. Lividity is produced by the congestions. The blood before death will tend to the lower part of the body. There is a case in Beck of the young officer in India, and the case of a man strangled in a hackney coach. I do not know that I should consider myself as competent to judge as a physician who examined the wounds and body. I do not know that there could be an indentation in case of apoplexy. Abrasion of the skin would not be occasioned in apoplexy. The marks I speak of are fusions of blood from the capillary tubes. In ecchymosis, the whole of the blood is poured out from the vessels, infiltration is the first stage of putrefaction and is a stain—from the serous matter of the blood only. It is not a general or safe rule to prescribe for a patient without seeing them, in any case. I know of no disease that will produce an abrasion of the skin. In the cases of spots in apoplexy, they were fused blood under the skin—a mere livid spot. In ecchymosis, there is swelling from the violence on the adjoining skin and flesh.

The testimony here closed on the part of the prisoner.

## REPELLING EVIDENCE OF THE COMMONWEALTH.

*David Wagener, again.*—When I first saw Getter he stood with his back towards me, and when he said "Come," he turned himself around. I thought I need not state this in court, because I saw him before me.

The Commonwealth here offered to give in evidence the declarations of the witness, corroborating and confirming his statement under oath—which was objected to by the prisoner's counsel, who cited in support of the objection, 1 Stark. Ev. 147—2 do. 1757.

The Commonwealth insisted that they had a right to corroborate and confirm a witness, after it has been attempted to impeach him, by giving in evidence his statements made at different times—citing 7 S. & R. 156, 162; 6 Bin. 292, 283; 2 Bacon, 663; Gilb. Ev. 150; 10th Ser. & Rawle, 322; 2 Rus. on Cr. 635.

The testimony was admitted by the Court.

*Elizabeth Wagener, again.*—When David turned around from the window he said nothing—while he stood there, he said, "Mamma, out there stands Charles Getter with Peg."

*Rachel Wagener, again.*—David said that evening to my mother, "Out there stands Charles Getter with Peg."

*Daniel Wagener, again.*—David went to the window and said, "Charles Getter stands out there with Peg."



*J. Weygandt, Esq., again.*—David Wagener stated the same thing before the inquest that he did before me, as to the position of the body.

*William Paxton, again.*—I had a conversation with Samuel Heil, on Thursday morning before the body was found. He was at the barn putting away his horses; I asked him if he knew one Charles Getter; he said yes, he was there over night and had slept with him. I asked him what time he came; he said he did not know—he guessed about 8 o'clock. Then he studied a little, and said it could not be so late. I then told him that could not be, for he was seen at Peter Wagener's the night before about a quarter past nine: he then said, I do not know, we were all in bed but our hired girl, and she came up and said Charles Getter was below, and I told her to go down and tell him to come up: she told him—he came up, and I asked him what made him come so late; and he said he had to wait so long at Clauss's for his supper. He then asked him if he would not sleep with him, and he said he believed he would: and in the morning when he got up, Charles got up too, and went out. I then told him, if he would not say any thing, I would tell him what I wanted with him: he said he would not: I then told him we had suspicions that he had murdered his wife. He then wanted me to say nothing about his being there over night—he right away made answer, it don't make any odds, it will come out any way. He then said, I do not know the time, you must go in the house, the girl can tell you better than I can.

*J. Weygandt, Esq., again.*—Samuel Heil said before me—Getter sent word with Benjamin Brader, that he was coming down to our house some time this week, to see how they came on up there, in Mount Bethel—meaning at Andrew Snyder's, and Jacob Heil's.

### TESTIMONY FOR PRISONER.

*John J. Burke, sworn.*—Some time, but I can't say what length of time after the body was found, John Mixsell was in front of my father's store door, and there stated that he had been down to Hellertown, and said he had some bills against the Wagener's. To the best of my knowledge he said, passing up the road or down the lane, he met Charles Getter. He then said, if he had not been detained at Freeman's, he might have seen something.

*Samuel Heil, again.*—Paxton came there, but I did not know him. When he was there about a minute, he asked if I had seen Getter; I told him he came last evening and went away in the morning. He asked me where he went; and I told him he went up to Clauss's to quarry stone. I then asked him for what he wanted him. He did not like to tell me; and I told him I would not say any thing. He then told me they did not know yet—they were hunting for Peggy Lawall—they thought she was dead—I should say nothing—perhaps she was not dead. I did not tell him they were all gone to bed but the maid, when he came there. I did not tell him that he should not tell that he had slept at our house. There was nobody present but me and him; the maid was in the house and the rest at the vendue.

Court adjourned till 2 o'clock in the afternoon.

## SPEECH OF ROBERT MAY BROOKE, ESQ.

FOR THE PROSECUTION.

*May it please the Court:*

GENTLEMEN OF THE JURY—In a short but extensive practice, this is the first time I have been called upon to conduct a prosecution for Homicide; though I have more than once conducted defences for the same offence. I feel the responsibility under which I labour; I am also sensible of the weight of responsibility which rests upon you. It is the duty of the counsel for the prosecution to present the case fairly before the jury, and it is the duty of the jury to decide fairly and impartially upon it.

There is no question of law involved in this case. You, Gentlemen of the Jury, are the arbiters of the life or death of Charles Getter, and from your decision there is no appeal. In opening the summing up on the part of the Commonwealth, I have no object in view but strict impartial justice. Vengeance is not the wish of the prosecution, or of those employed to conduct it. In performing, however, that duty, which is assigned me, I state to you that I will endeavour to do it with impartiality; but I will not withhold from the Court and you, any just inference that can be drawn from the testimony, or any opinion that I have formed upon it. I am perfectly aware, from the course in which the defence has been conducted, that the employment, by the friends of the unfortunate deceased, of additional counsel to the public prosecutor, will be made the subject of serious remark; but I beg of you, Gentlemen of the Jury, to call to your minds, that it is not the ability of the counsel who conduct the defence, great as it is, nor their charges against the counsel for the prosecution, that are to save the prisoner if he be guilty. When that remark is made, gentlemen, carry with it in your minds whence it proceeds—from the counsel of a person seriously arraigned for the commission of an offence, the highest known to the law. And I have not yet to learn, to whose assertion the most credit is to be attached—that of the counsel of a man arraigned for the violation of the law, or that of the counsel who ask for nothing but its due administration. But I have yet to learn that it is disgraceful to counsel to

be concerned in vindicating and upholding the laws of the land, and the justice of the country, against the felon who has violated them.

Throughout the whole of the cause, we have been told, that the case has been conducted with an unusual and unwarrantable degree of zeal; we have been told that John Lawall was not only the prosecutor, but the unfeeling persecutor here. And permit me to ask you, gentlemen, in the outset of this part of the cause—for it is my intention, if God spare me health and strength, to canvass every fact which has been given in evidence, and every argument which has been used on the other side—who is John Lawall? and what has he done, to be the subject of animadversion? True, he has sat by the counsel conducting the prosecution; true, he has paid my friend Brown and myself a compensation for our services; but bear in mind, that he found his sister murdered in a very mysterious manner; that he had his and her aged mother asking him to find out the author of this unholy deed. Strong suspicion, from the instant, rested upon Charles Getter. I have long known Mr. Lawall; and I think, gentlemen of the Jury, you all must know him to be one of the worthiest citizens of our county: and had he not taken part in this cause, his own children must have told him he was unworthy the cries of a mother's pitying love. As well might they tell me, that that old lady who sits before me, who asks for nothing but justice against the man whom she believes sent her daughter "unhousel'd, unannointed, unannelled, with all her sins upon her head before her God," was violating the principles of humanity. We have all been the subject of a mother's love—a mother's care has watched our cradles. Who that has buried his mother would not shed tears to hear a mother slandered for asking for nothing but justice upon her daughter's murderer? Who that was a brother, and knew the kindness of sisterly affection, that would not, when he found his sister murdered, sift the transaction to the bottom? Where has there been any manifestation of undue feeling? You yourselves have seen, that the prisoner's counsel have been furnished with a copy of the testimony taken before the examining magistrate; you have also seen that the prisoner has sat by his counsel. And who made the proposition that he should sit by his counsel? The counsel for the prisoner forget that in their remarks. But, gentlemen, there was another matter: Who made any difficulty about the selection of the jury? Did not the *hired* counsel—as they have been opprobriously termed—say, that all they asked was an impartial jury? Were you not yourselves witnesses of that matter? These remarks are an answer to any thing that has been or may be said in relation to the hiring of counsel for the prosecution. Let any remarks that may be made to you upon that subject, pass as the idle wind. Consider them as nothing. Believe me when I tell you that it is the wish of the prosecution you should lay aside every thing like feeling: disregard every thing like public prejudice. Remember that your minds are to be like blank paper, upon which you are to make your own impression from the evidence, and from it alone.

The case is one depending upon circumstantial testimony. There was no person present with the agent at the time the fatal deed was committed; and it is your duty to come to your conclusion as to the death of the deceased, from the circumstances proved. In all capital cases, the uncertainty of circumstantial evidence, is regularly made the harping stone of the defence; in almost all crimes but that of slight bodily injury, we must depend upon circumstantial evidence for proof. The higher the grade of the offence, the more we must depend on this species of testimony; for we all know that crimes of magnitude are committed in secrecy,—but the very secrecy in which they are committed, ultimately leads to their detection. Can we be called upon to prove the distinct fact of the strangulation by a witness who saw it? If so, all crimes will escape detection, excepting those of a very trifling character; trifling offences alone will be punished, while enormous ones will escape with impunity. The rules of evidence are the same in all cases. There is no more weight of evidence required in a case of murder, than in a case of larceny; in either case the mind must be satisfied. There will, no doubt, be numerous cases, so called, read to you,—they are generally and almost universally read to jurors, by the counsel for the prisoner, in cases of the character of that which you are now trying. They are generally extreme cases; and, without anticipating what may be said on the other side, the cases which are to be found in the books can be classed under two general heads:—those where no body is found, and those where the conviction is procured by the perjury of a person interested to protect himself. The case of Uncle and Niece is considered the strongest case, but from the fact that no body was found in that case, Lord Hale draws his direction, that a jury should not in any case convict without a dead body being found; unless the *corpus delicti* be found, there is no necessity of a search for a criminal agent. Here Mr. Brooke, after referring to 1 *Starkie*, 478,—2 *Russell*, 666.—1 *Earts*, P. C. 223,—added the observation, that one man may perjure himself, but it has never yet occurred in any criminal trial within his research, that a whole class of men have. It may be confidently asserted that, where life has been taken away by perjury in making a false accusation of crime, it has been done through the instrumentality of one, or at the extent, of two witnesses. There are only two things in a case of murder, which are necessary to be distinctly established; those are, that a dead body shall be found, and that the conduct of the accused should be inconsistent with the idea of his innocence,—provided a violent death is shown. That, we believe is proved here, as I shall endeavour to show hereafter; and in this case the circumstantial evidence, as to the prisoner having been the criminal agent, is more strong than were he before you to acknowledge his guilt. Con-



fessions may be obtained by artifice, by threats, or by persuasion. Witnesses may be induced to perjure themselves, but circumstances can not lie.

The prisoner is charged with the wilful, deliberate, and premeditated murder of his wife—of the being that he had injured—and to repair that injury, had sworn upon the altar of his God, to love, to cherish, and protect. The offence charged is one at which all nature revolts, which no motive can justify, no feeling extenuate, which no earthly punishment can wash out. The offence involves in it the crime of most aggravated perjury; but the enormity of the offence has nothing to do with the conviction of the agent. The verdict is to be rendered according to the evidence—it is to be guilty or not guilty: Here there is no dispute as to the grade of the offence. If the prisoner be proved to have committed the act, your verdict should be guilty of murder of the first degree. If he be not established the criminal agent of a criminal act, beyond a reasonable doubt, your verdict should be, not guilty. The first matter of enquiry, then, gentlemen, is, was a homicide committed; for until a criminal act is proved, there is no need of searching for a criminal agent. No person who has heard the evidence in this cause, can suffer his mind to doubt as to the cause of Rebecca Getter's death. There is nothing in the case, consistent with the idea of her having died a natural death. On the evening of the 27th February she was at Peter Wagener's. Having made her arrangements for moving the next day, she left there to go to Adam Wagener's, which according to the evidence, is about fifteen rods off; she certainly did not make any preparations for being away over night—her expression was, that she would just run across at Adam's to get the sausage. No person can reasonably doubt that some person was with her when she left Peter Wagener's—all the witnesses that have been examined in relation to this part of the subject, say they heard some person talking with her—that voice was a man's voice: Who the person was, we will not now enquire; that person, however, went with her to Adam Wagener's; he was still talking with her when he arrived at Adam Wagener's. She started, according to the testimony of Mrs. Zearfass, towards Peter Wagener's from Adam's, and the whole family say they saw some person pass around the house whilst Peggy was in—she remained in the house but a few minutes and did not sit down; when she went out she was accompanied by Mrs. Zearfass. She went up the road towards Peter's. Her body was found according to the measurement, 109 perches from Peter Wagener's, directly south of Adam Wagener's towards the Bethlehem road. Now, let us pause awhile and enquire: What could have induced her to go back from where Mrs. Zearfass left her, towards the Bethlehem road? She went at evening, in the hey-day of her happiness, with no bonnet on, saying that she was just going to run across to get the sausage that Mrs. Adam Wagener had promised her—when Mrs. Wagener told her that she would put the sausage in soak, she left the house in company with Mrs. Zearfass. Her body was found in a directly contrary direction from that in which she went—why did she turn back? It has been distinctly proved that a male voice was heard in conversation with her, at both Peter Wagener's and Adam Wagener's—and when we connect that circumstance with the fact, that the person who was with her did not go into either of the houses. Is it not a fair presumption that the deceased was induced by that person to go down the road? And do you not believe with me, that she went with that person under the representation that they would spend the night together at Aaron Bunstein's? No possible motive can be shown for her change of course but this. He induced her to believe that they would spend the night there by themselves. Mark, that they go beyond Adam Wagener's orchard, then let down the bars to the opening of the field where the body was found, in a direct line towards Aaron Bunstine's. They walked along the fence inside of the field, until they arrived at the fatal spot. Now permit me to say, that the Homicide was committed by some person in whom the deceased had confidence. The condition of her body was not that of one who had fallen in a fit, but of one whose death was occasioned by violence inflicted by another. Her dress was composed, her limbs straight and together, her right hand lay by her side and her left upon her breast; her comb could not have been broken in the manner in which these pieces are broken, by a fall—it could only have been broken by a pressure upon her neck by a hand, or some other violence. It is impossible to conceive that a single fall could have broken the teeth in a manner in which these are broken; some of the broken pieces were found entangled in her hair, and others laying on the ground around her head. Dr. Gross tells us, that he found some in her hair in the *post mortem* examination. Mr. Owen says, that when he raised her body up, he discovered that her head had been in a hole—that he picked up some of the pieces of the comb, and he describes to us the manner in which the comb was broken; and it is against all experience that this fracture of the comb could have been occasioned by a single fall, which would have snapped the comb and broken it, but could not have entangled it in the hair; and when we bear in mind the manner in which her limbs and clothes were composed, the conclusion instantly presses itself upon our minds, that they were in the condition of a person who had been murdered by another, who had taken time to adjust them, but did not take time to collect the pieces of her comb. The place also where she was found, was one admirably suited to the purpose. You will recollect that there was a high bank on the side of the road; above that, there was a stone wall from two to four feet high, upon which was a post fence; her body was found just inside of the wall at a point of the field calculated to exclude the body from view; and John Lawall tells us that even when on his horse when in the road, he could not see the body. Again, we have the marks upon the body—that peculiar lividity

which accompanies and follows strangulation—her lips were protruded—her tongue largely distended; so of her eyes, which were largely swollen, and her cheeks were peculiarly livid. Without going any further, could there be doubt as to the cause of her death? But, to satisfy every reasonable mind, let us turn to some more of the marks which were discovered on the body. The very intelligent justice of the peace who held the inquest, (Mr. Weygandt,) observed marks when at some distance from the body—he describes them as having the appearance of red marks on each side of the neck; so also does Mr. Sigman and several others of the inquest. Bear in mind that the inquest was held before Doctor Gross came there at all. That the inquest noticed, to use their own language, evident marks of violence on the neck—they have been described as having the appearance of the pressure of the thumb on the right side of the neck, and the marks of fingers on the other side of the neck. There was an abrasion of the skin on the chin—abrasion of the skin is not a mark of apoplexy, nor can any body tell us that it is an effect of freezing. Mr. Burt says that he could plainly distinguish the mark of the thumb nail and the finger marks on the other side of the neck; no one can suspect him of improper motives in testifying; he is a stranger to all these persons—intelligent, and respectable, and nothing but a desire to promote the ends of justice, and a love of truth, directs him in his testimony. We have then Eben Owen, who tells in the main the same story, besides the manner in which the pieces of the comb were found. Mr. Snyder describes the marks on the body and also the hole in the ground in which the head rested; he says this hole seemed to be indented by the head. Wherever these men are known they are advantageously known—they have delivered their testimony in a candid manner, and each corroborates, and is corroborated by the others. Their testimony should be powerfully strong in producing conviction. They are above the reach of imputation of improper motive, and their testimony alone, without reference to the *post mortem* examination, is all sufficient to produce conviction that she came to her death by violent means. There is no variance between them in regard to the leading matter—the marks of violent death. It is true there is a slight variance with regard to the number and character of the marks, but had they given exactly the same description of all the minute circumstances, that same coincidence might lead to a suspicion of pre-concert. Exact coincidence as to minute circumstances, is always suspicious; but it may be laid down safely, that slight variations between different witnesses testifying to the same leading matters, instead of being an objection to the weight of testimony, must be considered as adding strength to it. The question is, does the evidence lead the mind to the conclusion of the fact charged? If so, the object of proof is accomplished. But we do not rest here. We have the fact, that the *corpus delicti*, underwent a *post mortem* examination by a surgeon of undoubted capacity, intelligence, and skill, who after describing his examination, and being asked for his opinion, as to the cause of her death, makes use of the strong language, “ unquestionably she came to her death by manual strangulation.” There is no discrepancy between the testimony of Doctor Gross and Doctor Gwinner. Instead of detracting from the force of Dr. Gross’s testimony, Dr. Gwinner had added strength to it; and he says further, that “ no one is so competent to judge of the causes which have produced death, as the surgeon who has examined for himself.”

Dr. Gross had all the opportunities possible to enable him to form a correct judgment. His powers of mind, extensive reading, and universally admitted surgical skill, combined to enable him to come to a correct conclusion, and in telling us the conclusion to which his mind was brought, he uses the strongest possible term—“ *unquestionably she came to her death by manual strangulation.*” Dr. Gwinner gives his judgment without having seen the body, and says—“ *I am not able to form any opinion about the marks of violence, not having seen the body;*” he says also that “ *he has never seen a subject where death was produced by manual strangulation;*” he says further, “ *that taking the description of the examining surgeon as his guide,* he would say that with the exception of the marks of violence on the neck, *the appearances were similar to those, in cases of death by apoplexy.*” But it is one leading fact in the case, that these marks indicate the manner in which the deceased came to her death, and these marks, Dr. Gwinner says, he puts out of view in coming to a conclusion from the description of the examining surgeon. Dr. Gross tells us that to have inflicted this manual strangulation, muscle and nerve would be required. Have we not here, all that muscle and nerve which is spoken of by Dr. Gross, which was necessary to commit this act? The appearance of the prisoner shows his muscle, and his conduct shows his nerve. Dr. Gross tells us that she died by violent means, and who tells us that she did not?—Dr. Gwinner certainly does not say so: the counsel for the prisoner, whose duty it is to lay hold of every circumstance from which the smallest inference can be drawn consistent with the prisoner’s innocence, question this matter. Dr. Gwinner tells us that he could not come to a conclusion, not having seen the body: that no one was so well qualified to judge correctly, as the examining surgeon. Dr. Gross was that examining surgeon: he says she came to her death by manual strangulation, and his testimony is corroborated by all the circumstances proved. In what other manner could she have died? The body did not exhibit the shrivelled state of the skin, the consequence of death by freezing. On the contrary her countenance was bloated, apoplexy would not leave the marks of the thumb and fingers, which are described by all the witnesses who saw the body; those marks could not have been inflicted by herself—she did not commit suicide, that is hardly pretended to be said. What motive had she to commit suicide? Mankind are the creatures of motive.



It is the mainspring of human action—motive prompts to act, action is the consequence of motive. What motive, then, had she to commit suicide? She had prepared to move, she had rented a room, she believed that now the man who had injured her, was about to repair that injury—she was in the hey day of her existence, and we cannot for an instant harbour the idea that she committed suicide. It has been said that her screams might have been heard, had she been murdered by violence—but bear in mind the distance from the place where her body was found, to any house—she was 46 perches from the Bethlehem road, about 50 from Aaron Bunstein's, the nearest house, it was about 80 from Edleman's, about 95 from Adam Wagener's, and 105 from Peter Wagener's. It was found in a lone sequestered place, to which she had been induced to go, by some one in whom she had confidence, and when the iron grip was upon her neck, she could not scream. The instant that that thumb and those fingers were pressed upon her larynx, there was an end of noise. Manual strangulation is some times easily effected, and effected without noise, and we have instances on record, in books of established authority, of persons having been strangled without the knowledge of persons who had not been the half of a half rod off. There is a strong illustration of this doctrine to be found in the case of Dr. Clench, which is stated in Paris & Fonblanque, 47, and which is also reported in the 12th vol. of the State Trials. This gentleman was strangled in a hackney coach, by two men, while driving about the streets of London, without the coach-man's having the slightest knowledge, until they afterwards found him quite dead, kneeling down with his head on the seat, and a handkerchief bound around his neck; in which was a piece of coal placed just over the wind-pipe. The effect of the pressure of the thumb will be precisely the same as that produced by the pressure of the coal in Clench's case. There is also, another instance of the ease with which manual strangulation may be accomplished, in the case of the young officer stated in the note 2nd Beck 49, who refers to Metzger 39, who is stated to have been manually strangled, and the person who committed the act confessed it previous to his execution, and there was no mark of violence which could be discovered by the surgeon on the examination, excepting a single small mark upon the neck. These cases entirely explode all the wire drawn arguments which have been used on the other side, in relation to the similarity of the symptoms of apoplexy with those of manual strangulation. They show that manual strangulation may be easily effected, and that without noise, and the examining surgeon who alone is competent to decide, says, that she did not come to her death by apoplexy, but unquestionably by manual strangulation. And while upon the subject of medical evidence, I will take the liberty of calling your attention, and that of the court, to some observations which will be found in 1st Paris & Fonblanque 158 & 9, which, in connection with the whole of that work, it would be well if any lawyer and surgeon would carefully read and impress on his mind, whenever called upon by professional duty in a case of homicide. The writer says, "Great difficulties must always arise in the examination of a medical or chemical witness, when the examining party is uninformed, or at least very partially acquainted with the science in question; for it is next to impossible for counsel so to frame their examination of a scientific witness, as to elicit the whole truth, unless they are, by previously acquired knowledge, acquainted with the bearings of each answer upon the cause which they are maintaining; and though there are a few instances of persons of such superior talent, that they collect from the mere information of their briefs, so much knowledge as will enable them to perform this duty, with credit to themselves, and satisfaction to their clients and the public; yet such instances are rare, and even those most gifted will admit that there is a most material difference between examining a witness on matters of fact, of which all persons who have applied themselves to the laws and nature of evidence may be competent judges, and the examination of abstract opinions, and speculations of philosophy, or physics, where the examiner can as little follow the reasoning of a witness, as if he spoke some foreign and unknown language. For it is impossible within the compass of any ordinary *viva voce* examination to elicit all the points on which explanation may be necessary, or to remove all the doubts which may give occasion to future controversy." These are the sentiments of writers of undoubted eminence, and we have a singular illustration of the truth of these remarks, in the fact, that we were obliged to call upon the surgeons who testified here, to explain the technical terms of art which they made use of in giving in their testimony. I am sorry gentlemen, to have taken up so much of your time upon a point which, although all-important to the decision in the cause, has always appeared to be perfectly plain—but it was due, however, to the respect I entertained for the counsel who had pressed it upon you as a question of doubt, to explain my own views of the matter.

If then, the deceased came to her death by violent means, who was the criminal agent of those means? And this brings me to the second part of my argument. I have already said that mankind are the creatures of motive; that crime is not committed without motive—permit me to add, that it is said by one of the greatest writers upon the philosophy of human nature, that if there were no incitement to action, active power would be given us in vain—that without a motive to direct our active exertions, the mind would be in a state of perfect indifference, and its functions would be useless. Our main inquiry then, in this part of this case must be a search for motive to lead to a criminal act. The unfortunate deceased certainly was not murdered from a motive of plunder, she was not the object of plunder, and the only trifling articles which she had about her person were not taken from her. Had she any enemy save the one who had

sworn that he would be rid of her? Has any person been shown to you by the evidence, upon whom the slightest shade of suspicion could be cast, but the prisoner at the bar? I do not say, that because the prisoner has been suspected, he is guilty, for that would not be doing my duty to you, nor would it be a redemption of my pledge to you, to conduct the cause with impartiality. You are not to act upon suspicion, you are to judge from the evidence, you are to ask yourselves before you decide, does that evidence bring home conviction to the mind. Not does it lead to suspicion—but does it show guilt beyond reasonable doubt. Yet the absence of motive, in the breast of any other person to commit the act charged upon the prisoner, is shown, and when we show a most powerful motive in his breast to commit the act, it naturally leads our minds to the conclusion that he did commit it. We have shown a murder committed—we have shown that it was committed by some person who had motive to commit it, at a time when she had been seduced by the persuasions of a person in whom she had confidence, to accompany him. She was advanced in pregnancy, and with whom would she be more likely to entrust herself late in the evening, than her husband—who had induced her to believe that he was going to live with her. Most sadly was that confidence abused, and he in whom she had reposed it, instead of fulfilling his vow to love, and cherish and protect her, sent her and the unconscious fruit of their mutual crime, to another—and charity prompts us to hope—to a better world. Whoever the criminal agent of this criminal act was, he was the perpetrator of two murders. To pursue the inquiry as to motive—we show the fact of Charles Getter's disposition being very voluptuous. That bound by no tie, which binds us to society, he went with the oath by which he had pledged himself to the girl that he had ruined, fresh in his recollection, in the pursuit of a new object of his voluptuousness. He had gratified his passions upon the body of the unfortunate deceased, and no sooner did its fruit begin to appear, than he left her for another object. That object was Molly Hummer. I think candour, obliges me to acquaint him of similar intentions towards her, for it appears from the testimony, that in violation of the duty he owed to the deceased, he had engaged himself to marry her. The testimony of several of the witnesses, shows the fact, that he was engaged to be married to her—for to Joseph Buss, he says, (and this after his marriage to the deceased) that his marriage would not make so much difference to him if he had not been promised to another.—To another he said, that he was as single as ever: to Rachel Wagener he said, in exhibiting extreme reluctance to accompany the constable to the squire's, that he was promised to Molly, and that he would rather have her than the whole world. You will recollect that these witnesses which we have produced, are all young friends and intimate companions of the prisoner, whom we were necessitated to bring forward as witnesses, and testified before you, with sorrow and reluctance—and no objection can be made to their testimony on the part of the prisoner. To Benjamin Brader, he said that Molly was a nice girl, and he had a notion to marry her. In this state of mind, he is arrested and taken before justice Weygandt. His conduct when taken to Wagener's the evening before, shows his state of mind conclusively, for when at Wagener's he cried bitterly at the idea of having to marry her, and it was his attachment to Molly Hummer that made him so reluctant to do justice to Peggy Lawall. When before the justice he hesitated, said nothing for a considerable time; and it was not until the Justice told him that he must do one thing or the other; either give security for his appearance at court, marry the woman, or go to gaol, that he called the deceased out into the entry, where they remained for some time, and then returned with her and said no more, but to the Justice, you may now finish it. What was his conduct immediately subsequent? Does he stay with his wife that night? No, he goes immediately to where Molly Hummer was at work, nursing Benjamin Brader's wife—and mark his conduct there—they discovered him between four and five o'clock, on John Brader's porch, fretting and crying, as the witnesses explain it, he did not go into the house at first, but called Benjamin Brader out on to the porch—he there says to Benjamin Brader, tells it to his father and brother, when asked why he cried so, that Peggy Lawall had made him trouble; he told Mrs. Brader that he was married to her, he cried and appeared to be very sorry that he was married, he gave as the reason of his sorrow—not that he cared so much about it himself, but that he pitied Molly Hummer so. Here is the vital principal of his action shown—she was the very centre of his affections, the mainspring of his conduct. To the Bradens also, he says—you must not tell Molly Hummer of this, I will tell her myself: she is called out into the kitchen, where he is, and then they are closeted together for some time. What induced him to such conduct as this? He had that day been married to another—he had left her, and gone after the object of his affections; or, to speak more correctly. His adulterous passion, in direct violation of his marriage vow—and follows up this conduct by the immediate and emphatic declaration, often repeated, that he would not live with his wife, that he would have Molly Hummer yet. Conduct like this, was committing crime of the very highest character—that of perjury; and, gentlemen, let us pursue him further, with regard to his conduct on the day of marriage. He is anxious to remain at Brader's that night, but they told him he could not stay there; that the people would talk about it, that it would be improper, as Molly Hummer was there. It would appear from this, that the people at large, knew of his attachment to Molly Hummer. The Bradens, therefore, very properly told him to go home. Where was his home, and where did they mean? Of course to his wife. But what did Molly Hummer say. Did she tell him to go home to his wife? No—she told him if he did not wish to go home, he should go to Walter's, and stay there. It would appear from this, that she had monstrous influ-



ence over his mind; that her word was his law. In all his intercourse with Molly Hummer he was feeding that passion, which urged him to murder his wife. From that time on, his whole conduct is a series of threats and declamations, made in ambiguous language against his wife. He said on the same day he was married, that he never would live with his wife; that he would have Molly Hummer yet, let it cost him what it would. To Anna Matilda Walter, he said that he would not live with his wife, it was against his very nature; that he would rather go to gaol five or ten years; that he would have Molly Hummer yet for his wife, if it was five years to come, and that he was as single as ever he was—And call to mind, his version to Joseph Buss, of the conversation which he had with his wife at Walter's. The brutal manner in which he says he treated her there, I will not repeat. After he had sent for her to meet him by appointment, he tells Buss he did not send for her, but he met her accidentally. And what is worse than all, he boasts of the brutal manner in which he treated her. To M'Vaugh, he said he would have Molly Hummer for his wife, if it should be in five years to come. To George Hackman, he said that he would not keep house with his wife; that he would have Molly Hummer, let it cost him what it would. To Transue, he said that he was as single as ever he was in his life, that he never in his life would live with his wife an hour—and said to Transue if you were in my place you would not either; something was then said about his getting "the one he wanted,"—Transue said that was Molly Hummer, and Getter gave no answer. And to Mrs. Transue, he said substantially the same thing. Some time after his marriage, he went to Esquire Weygandt for the purpose of paying him the balance of the costs, and then he asked if he would be obliged to live with this woman—he was told that she was his wife, and he would have to support her; and when told so, he pondered for a while, and then remarked that he was sorry a hundred and a thousand times, that he had married her. To Samuel Walter, he said he would get rid of her; the witness told him he did not know how he could get free, unless he could get divorced by the court. His answer was with his usual *doggedness*—"I will get rid of her." But it is said, and the question has been put to nearly all the witnesses, that he never made use of any threats of personal violence against his wife—these witnesses said no, they had not, when at the same time they had just related these threats of personal violence—nay, they were more than threats of violence, they were threats of murder. He makes use of also, to one of the witnesses, the singular remark, that he would have her, if he had to *walk over pins*. To John Brader and to his wife, notwithstanding that they had told him he could not get rid of her—that Walter had told him he could not get rid of her—he said that he would get rid of her. About three weeks before the murder, he said that he would get clear of her in three weeks; he was told that he could not get clear of her; he repeated that he would. About a week before the murder, he said at Brader's, also, that he would get clear of her before a week was round. It is true that he did not say how he would get rid of her. But it is equally true that when he made the remark that he would get rid of her in a week, the witnesses state that he was wishing she was dead. Here in an unguarded moment, he let out the manner in which he would get rid of her. He had been told by his friends that he could not get rid of her legally. And in the recesses of his mind, he had formed the design of the committing of the offence with which he is now charged. Another matter must not be omitted, and that was his answer to Mr. Brader, when he was plaguing him about soon being Daddy. His answer was—I won't be daddy. Then raising his finger and shaking it in an emphatic manner, said—John you shall see that I won't be daddy. And the gentlemen on the other side, with all their ingenuity, cannot explain away the force of this.—This as well as all the other declarations which we have laid before you, cannot be reconciled with the idea of Charles Getter's innocence, but they are perfectly consistent with each other, perfectly consistent with the idea of his guilt, and irresistably tend to the proof of it. Another motive it appears from the evidence, he had. His own guilty mind had suffered himself to conceive that he was not the father of the child which Rebecca Lawall was then bearing. Than this, no passion could have a more powerful operation on the mind. True it was unfounded, but it had, nevertheless, taken possession of his mind—and it is a passion at whose

"Approach, all Nature changes;  
Love turns to rage, friendship to blackest hate;  
Benevolence and mercy flee away;  
Leaving the mind of man a perfect hell,  
Fit only for Revenge to gratify"——

We have thus shown that he was influenced by the most powerful passions of the human heart to commit this deed. His dislike to his wife—his adulterous passion, which does not deserve the name of love, and jealousy engendered in his own breast, all urged him to the commission of the fatal deed—and he, in his mind, resolved to accomplish it; and, the more securely to lead the victim into his toils, he all at once feigns repentance; and, although he had repeatedly asseverated, in the most solemn manner, that he would not live with her, he all at once says that he will live with her. His repentance was like the cries of the crocodile—without his heart's harbouring the least idea of living with her. In pursuance of previous arrangements between his wife and him—brought about by his feigned repentance—they met at Bunstein's, by appointment, on the Saturday afternoon previous to the murder: the deceased was not there; he walked

about, and, after some time, wondered why she did not come; he was asked who, and he said Peggy—that they had agreed to meet there that afternoon. She did not come, and he continued still more anxious, and Mrs. Bunstein went over for Peggy:—Upon her coming there, they sat sometime without saying a word. It was part of Getter's plan, that nobody should be present at the conference at which they were to fix their time, and make their preparations for house-keeping; they got up, and went out, it was almost night, when the deceased returned into the house. Getter did not return with her. We were not permitted to show what the deceased said, when she returned into the house, but we have a right to infer, from the circumstances, what they talked about out of doors.—Bear in mind, it is not proved that, previous to this, the deceased had made any preparations for going to house-keeping. The Monday following, however, we find her in Easton, purchasing articles of household furniture; and, on the Tuesday following, she sends up to her mother's for the furniture which she had. She baked bread, made arrangements for a sausage, and, in the language of the witness, she had prepared every thing for moving on Thursday; she had, recollect, rented a room at Samuel Walter's, to which she was going to move.

We are now drawing near the closing scene of this tragedy, and near to the fatal occasion upon which the murder was committed.—John Lawall proves that Getter told him, that he knew that the deceased had made arrangements for moving that week. John Lawall is a brother of the deceased, but his testimony is wholly unimpeached. Then, on that Wednesday evening, we find the prisoner apparently reconciled to living with the deceased; but that reconciliation was but skin deep—for, after having promised to live with her on Saturday, or Sunday, he tells Hope that he would not live with her, and goes from Hope's to Bunstein's, and says he could not sit down, it troubled him so, and he would walk about a little, to spend the time. The next place that we find him, was at Brader's, and there we find him also very much troubled: and he let out the cause of his trouble, he said now Molly was gone—and true it was that Molly left Philip Heil's, for Mount Bethel, that morning, and Charles Getter was there, when she left. On Monday evening, he was again at Brader's, and asked if he might stay all night, and did stay all night. In the morning, when he went away, he said he had slept so good that night—that he had not slept so good for a long time. The reason he slept so good that night—supposing he did so—was, that he had made up his mind with regard to the course of conduct he would pursue, in regard to his wife. He had fixed the means by which he would get rid of her—he had relieved his mind from a load of anxiety—he had made up his mind to destroy her—and the worst certainty is always more endurable, than a state of harrowing anxiety. He thought he had contrived his plans with so much ingenuity as to escape detection. After leaving Braders', on Tuesday morning, we hear no more of him till Wednesday, at Clauss's, where he had been at work, quarrying stone.—The sun set on that day, according to the Almanack, at thirty-two minutes past five o'clock; and, at that season of the year, the interval between sun-set and dark is very brief. The witnesses state they ate supper, that evening, about six o'clock. Getter got up before most of them from the table, and, what is remarkable, is the circumstance, that he should take a direction directly contrary to the one which led to the place where he said he was going. Something was said about his having left his coat on the shingle pile; but there is no proof of that, nor does it appear that he left his work without his coat. It was in cold weather, and he would be apt to put his coat on, in returning from his work.—But the proof is, that he went past the shingle pile, in the direction that would lead to Wagener's; did he say when he was going there?—and, if he were going on a visit of pleasure, then is the time that he would naturally talk about it. Matthias Joseph stated in Getter's presence, and when he must have heard it, that he was going that evening down to Hackman's, which is directly on the road to Heil's, and had asked him, the same day, if he would not go down with him; he must have known, therefore, that Joseph was going to Hackman's. But he did not go directly to Heil's; if he had, he could have told but one story in relation to his errand there. Once he said he had his watch at Easton, and Heil was to bring it out;—(that he afterwards corrected to Esquire Weygandt.) At another time, he said that he had his watch at Easton; and, on the night he slept at Heil's, he said he asked Heil to bring it out, but he did not go there for that purpose. Now, to Benjamin Brader, who is Heil's brother-in-law, he said, the witness should tell him, that he (Getter) was coming down that week, and that he (Heil) should get it done; and to others, he says his errand was to go home to his brother-in-law's, which was below Heil's, and in the same direction, to get some clean clothes. Now truth can tell but one story, and is always consistent with itself.—He told still another story, which is a contradiction of all these, and which shows another important fact; viz. the connection with Molly Hummer. It will be recollected that Samuel Heil had taken Molly Hummer up to Mount Bethel, on Sunday, and he said he was going down there to see how the people came on, up in Mount Bethel.—The first question he asked, when he got to Philip Heil's, was, whether Samuel had got home; and the first question he put to Samuel, after he had got to bed, was, how the people were, up in Mount Bethel, and whether he had taken Molly. He did not go in a direction towards Heil's, but in the contrary direction—and no one saw him come back. There were many work people about at Clauss's, and, had he gone to the shingle-pile and got his coat, and returned, it is most probable that some of the people would have seen him return. But, among the many conversations he had in gaol, he said, to Samuel Walter, that he went to Heil's,



from Clauss's, the nearest way, by Hackman's; and, when the witness told him he understood it was sworn he did not go that way, and that he went in a different direction, towards the shingle pile, his answer was, that nobody could swear to that, for nobody saw him start, that nobody was on the porch when he started, that he looked and nobody saw him start. Now, if he was going merely upon a friendly visit to Heil's, either to get his watch, or to see how they came on in Mount Bethel, or to get clean clothes, why go secretly? There was, certainly, no harm in going on either errand—and why watch for a secret opportunity to go in a different direction, when nobody saw him. Again, no calculation can make the distance from Clauss's to Heil's more than four and a quarter miles. The prisoner left Clauss's, according to all the testimony, about a quarter past six o'clock, in the evening, and say that he arrived at Heil's at twenty minutes before nine o'clock; here, then, are two hours, and nearly a half, occupied in going only that distance! He is a young man, healthy, and very active:—it was a cold night, and he was alone.—He said, before the Justice, that he went straight on, and did not stop any where, and you cannot believe that it took him that time. He best compares with himself, with regard to the length of time it would take him. The next morning, in returning over the same ground, he started some time after six o'clock; (for Mr. Heil wakened him after the clock struck six,) he dressed himself, and had some conversation with Mr. Heil; (in that conversation he told Heil that they ate breakfast about sunrise, sometimes a little after;) he stopped on the road at Brader's, had some conversation with Mr. and Mrs. Brader, and gets to Clauss's while they were eating breakfast; which, from all accounts, could not have been later than seven o'clock, and he must, therefore, have walked the distance in something less than an hour, and it is contrary to experience to say, that his being a little tardy at his work, in the morning, would hurry him more than his anxiety to hear from the object of his attachment, by a person who had come from where she was.—The latter was at night: the walking was more dreary—his inducements for haste stronger: he met nobody—saw nobody—and yet he says it took him two-thirds longer in the evening, than it did in the morning. Is this probable? At the breakfast-table it is stated, that they noticed nothing unusual in his appearance; he was not particularly warm.—The witnesses state, he had walked the distance in less than an hour, and did not seem heated. It has also been said, however, that he did not appear to be heated the night before, at Samuel Heil's, when he came to bed to him; but I feel very much inclined to question whether Heil could judge of that, for Heil was in bed, comfortably housed, of a cold winter's night, and, if another person, coming into his bed, had been a little warm, I don't think he would have been able to perceive it.

It then becomes an important question to ask, where was Charles Getter during this time? He does not account for it at all—or the account, which he pretends to give, is so lame and inconsistent, that no credit can be attached to it. The commonwealth, however, does account for it: for it was on that night, and during the interval of time unaccounted for, that the murder, with which Charles Getter stands charged, was committed. The distance from Clauss's down to Wagener's, thence to Heil's, is about six miles: and, allowing for the discrepancy in the clocks, and the gait at which the prisoner walked in the morning, he had ample time to go this distance, and commit the act charged. Our allegation is, that he crossed over the route, through the fields, over to Wagener's. We have shown that he was well acquainted with the nearest route, for he enquired of Willour the next day, the direction he came, and told him he had not come the nearest road; and they went back to Wagener's by one that he said was nearer; (and well might he know the nearest route, for he had travelled it the night before, for the purpose of committing this deed.) He arrives at the house of Peter Wagener, before the deceased starts for the sausage to Adam Wagener's: and, as soon as she comes out, he gets into conversation with her; because we have proved, that as soon as she went out of the door, Daniel Wagener states that he heard them talking, in front of the door: that he got up, and went to the door, and saw them walking together, down towards Adam Wagener's. In the matter, as to the voices being heard, all that were in the house agreed; and Daniel Wagener says that he believes the persons that he saw walking were the deceased and Charles Getter; it was neither any of the family of Adam Wagener, or of Peter Wagener—for we have accounted for them all. Who, then, was it? And here, again, the doctrine of motive to commit the act, coupled with the threats, apply to fix the act upon Charles Getter; and here, also, the time unaccounted for by Charles Getter, applies to fix the act upon him. But we don't rely upon circumstantial evidence, in this part of the case, though we might do so:—We prove, by the positive testimony of David Wagener, that it was Charles Getter. He says, that on this evening, about half-past eight, by their clock—which was nearly half an hour faster than Heil's—(and he had reason to recollect the time, for he had to take medicine every half hour) the deceased left the house, for the purpose of getting her sausage. He describes the conversation which he heard, in common with his mother, brother, and sister; and he stood up at the window, facing to the road and gate, in the east gable-end of the house. At a distance of about twenty-two feet from where he stood, at the gate, he saw some person in company with the deceased; that that person, judging from the sound of the voice, said to the deceased, "Come," and, as he said so, he turned around, and directly faced him; and they walked together down the road towards Adam Wagener's. And he says, in his examination, that it was Charles Getter and then makes use of the strong remark, that he "is sure it was Charles Getter, and no one

else." He had known Getter long and well. He had been very often in company with him, and, moreover, he exactly describes his dress. The night was a very bright, moonlight one, as is testified to by all the witnesses, and, as Getter turned round, he distinctly recognised him. There is another circumstance, in relation to his fixing the identity, which is of very great importance, and that is, his remarking, while at the window, "Mother, there is Charles Getter out there, with Peg." This is sworn to by three witnesses, besides David Wagener; and what but the fact that he saw him there, could have prompted him to have made the exclamation? It could not have been with a view to its being introduced as testimony here. David Wagener was not influenced by any motives of hostility against Charles Getter, for they were friends; and I can refer to yourselves with confidence, when I say, that his testimony was most impartial, and delivered in a most candid and unexceptionable manner.

There is no discrepancy in his testimony, nor is he contradicted at all. And does any one, after this testimony, doubt that David Wagener saw the prisoner there? If it is possible that any one can, the remainder of this testimony cannot but fail to dissipate his doubts. In addition, as I have already remarked, he is able to describe his dress—a brown linsey round-about, black pantaloons, and black hat. We have proved that that was the dress he had on, on Wednesday in the quarry; that that was the dress he had on, when he arrived at Heil's that night; that that was the dress he had on, when arrested by the constable the next day; and we have proved his admission to John Lawall, in the jail, that the dress he had on when brought to jail, was the one which he had worn all the week; and we proved his recognition the next morning by David Wagener, when he was brought through the orchard by the constable, as being the man he had seen the night before. The prisoner was not in the shade of the pear-trees when seen by David Wagener, but he was in the broad moonlight beyond them.

I think I have now established the identity to the satisfaction of every body, and let us proceed to follow the subsequent acts.—When David Wagener went out he saw them walking together, down towards Adam Wagener's. A voice was heard conversing with her on the porch before she went in;—this is stated by all of Adam Wagener's family. And the person was heard to go around the house, between the house and barn, towards the lane which divides the two gardens.—After the deceased had made her arrangements about the sausage, Mrs. Zearfass accompanied her to the gate, bade her good night, and stood until she got about half-way up the garden fence, towards this lane. In the meantime the prisoner had gone round the house, got into this lane dividing the two gardens, there waited until the deceased came out, met her at the entrance of the lane in the road, and persuaded her to alter her course in the direction of Bunstein's. She had not intended to go further than Adam Wagener's; she had no bonnet on, and what could have induced her to have changed her course, when on her way to Peter Wagener's, but the persuasion of some person in whom she had confidence? My belief is, that the prisoner persuaded her to go and spend the night at Bunstein's, for they were seen in that direction; they proceeded along the road to the bars,—let them down; got into the field, and walked along by the fence till they arrived to the spot where the body was found,—and there he killed her by manual strangulation. This part of the case does not rest on circumstantial evidence—it is positive evidence, which accounts for the declarations of the prisoner in regard to his wife—his conduct in starting from Clauss's, for the lapse of time, which cannot be otherwise accounted for,—and leaves no room to doubt of the guilt of the prisoner. The absence of the deceased was not noticed over night, because Peter Wagener's family thought she was staying at Adam's; in the morning, however she was missed; search was instituted, and it was not until about 10 or 11 o'clock the body was found, which in a distance only of about 100 rods from Peter Wagener's, and a less distance from Adam Wagener's; and this circumstance prevents them from saying that the place where she was found was a public one,—a better place for the commission of such a deed could not have been selected.

A few words, gentlemen, as to the time in the variation of the clocks and the distances. Wagener's clock is about half an hour faster than Heil's. The distance is about one and a half miles from the place where the body was found, to Heil's. Now, supposing that this homicide was committed at half-past 8 o'clock, the prisoner then had half an hour to go this mile and a half, after committing the act. The proof is, that the deceased staid but a very little time in at Adam's; she did not sit down, and Mrs. Wagener's expression is, "she staid but a very short time;" all that was necessary to be done, was to get the sausage, and put it in soak; and that the deceased was in a hurry, is shown by the fact, that some person was out waiting for her. Caroline Demur stated that it was nearer 9 than 8 o'clock, by Heil's clock when he got there; so also the prisoner stated, on his examination before the justice. Of course he must have had half an hour to go this mile and a half, in a cold winter night which he could easily accomplish in 20 minutes. This computation, taken in connection with the fact that he was seen there, and the lapse of time unaccounted for by him, makes the evidence of guilt irresistibly conclusive. That he was at Wagener's, there is no doubt, and that circumstance reconciles every other apparent inconsistency in the testimony; and as a consequence, the whole of the prisoner's fabrication that he went from Clauss's directly to Heil's, by way of Hackman's, falls to the ground. We have accounted for the lapse of time, though the prisoner has not, and cannot show us where he was during this two and a half hours. We have, however, strengthened, if corroboration were necessary, the testimony of David Wagener by the testimony of John C. Mixsell, who has been



made the subject of very severe animadversion in the course of this trial. [Here Mr. Brooke read from 1. *Starkie*, p. 466, 7 & 8, upon the subject of consistency of testimony, the effect of inconsistency of testimony, and of partial variance in testimony, and proceeded.] Although there are contradictions and variances in Mr. Mixsell's testimony, yet, in all the important parts of its bearing upon this case, he has been consistent with himself. When under oath, he has uniformly insisted that he met Charles Getter on the road that night. No man would perjure himself especially to take away the life of a fellow-being, without some powerful motive, and the witness had no possible motive. They had always been friends,—he knew him well; and the most abandoned profligate would revolt at the idea of committing perjury, from a mere wanton disposition to take away the life of a fellow-being against whom he had no malice. They have shown that Mixsell has at different times given different accounts of his meeting him; that he has said that he saw a man cross the road there, but that he would not swear who. This was before he had been to the jail; he was right in saying that he would not say who it was, until he had gone to the jail and satisfied himself; if he had been determined to swear away Charles Getter's life, why go to the jail? As soon as he came to the jail, Mr. Kisselback says he said yes, that is the man. What prompted the prisoner to ask Mr. Mixsell if he was a witness, but the knowledge that he had met some person on the road that night near the scene; which idea is strengthened by the question which he put to Mixsell, "was that you?" The fact of his having met Mixsell, does not appear to have been denied by Getter, according to Mr. Kisselback, and the only difficulty was as to the road upon which they met. Getter knew that he had crossed both roads in the night, and finding that he was departing from his usual taciturnity, in making an admission which affected his case in a very important particular, attempted to weaken the force of the admission, by disputing about the place where they had met. Mixsell's testimony is further corroborated by the situation of the ground, and the testimony of David Wagener; and his testimony is not necessary to the conviction of the prisoner, but it tends to strengthen the other parts of the case. It is said, and will no doubt be strongly pressed, that the prisoner showed no trepidation or alarm when arrested, or when at Heil's, or at Clauss's, in the morning. This is all so; but his conduct throughout, has shown him to be a man of iron nerves. He had long meditated the deed, he had expressed his determination by saying, that he never would live with her,—that he would not be daddy, when his wife was far advanced in pregnancy;—and having made up his mind to the commission of the act, and having the nerve to do it, it is not to be wondered at, that he did not show that trepidation which, under other circumstances, might have been shown by a man of different constitution. But there were times when his nerves quailed. When he said that he wished he had staid at Clauss's that night, his language was, "if I had only staid at Clauss's that night,—I have wished so, a hundred and a thousand times," he then spoke the language of his heart; in other words he said, if I had only staid at Clauss's that night, I would not be the guilty being I am.—Permit me to say that this expression, when in jail, is, in my opinion, a very strong one, and intimately connects with the other circumstances proved.

There is another matter which strikes me as a strong one. The principle of curiosity is one that is deeply implanted in our nature. No individual is destitute of it; there is no man or woman in the community, who hears of a death occasioned by violence, that does not immediately ask when? how? and where did the subject come to their death? But when we hear of the death of a near relation, we are universally struck and prompted to inquire into the circumstance by a kind of intuition. Here, however, the prisoner, when arrested and charged with the murder of his wife by the constable, merely asks, is she dead? then follows it up by the observation, I did nothing to her,—I have not seen her since last Saturday. In all their walk from Clauss's to Wagener's, he asked nothing further, not even where her body had been found. The expression, is she dead? struck us all as a powerful proof of the consciousness of guilt. It meant, it is my work,—did I do it effectually? She was his wife, to whom he was bound by every tie;—he is arrested as her murderer, he does not inquire into any one circumstance of the murder, and that for the best reason in the world—he knew more about it than any human being, for he himself was the criminal agent.

I have now done with this cause; and, although the circumstance of my being retained as counsel against a fellow-being's life, has been the subject of animadversion, my conscience acquits me of any improper conduct in the case. I have endeavoured, honestly and faithfully, to perform my duty; and the close of that duty is to ask of you, a verdict of conviction. The consequence of such a verdict will be, the ignominious death of the prisoner. But the law fixes the punishment,—it is not your verdict,—it is the judgment of the law upon his own crime, which is one of signal enormity, and should be signally punished. If the commonwealth, however, have not proved the prisoner at the bar guilty beyond a reasonable doubt,—if you believe that all the circumstances we have proved can be reconciled with his innocence, it is your duty to acquit him and restore him to the world. But, on the other hand, if the facts proved, lead your minds to a conviction of his guilt,—if you believe that those circumstances cannot be true and he be innocent, then your duty to your country, your conscience, and your God, call upon you, regardless of consequences, to find he is guilty of murder of the first degree.

## SPEECH OF EVAN REES, ESQ.

FOR THE PRISONER.

*May it please the Court—*

GENTLEMEN OF THE JURY—This case which has been long pending is now to the great satisfaction of him who is most interested in its result, about to be brought to a close. There are few if any conditions in life more miserable than that of a man charged with the commission of an atrocious crime, during that period of suspense which intervenes between arrest and trial; and the prisoner is rejoiced that this trying period will soon be past and the time shortly arrive when he shall exchange his prison and chains either for freedom and the enjoyments which life affords to youth, or for infamy and the grave.

You have been sworn to make true deliverance between the Commonwealth and the defendant, and to give a true judgment according to the evidence; as your judgment must be according to the evidence, it is necessary in the first place to determine upon the principles by which you will be governed in weighing the testimony and forming your verdict. It is an established principle of criminal jurisprudence, that before a man can be convicted of any crime, he must be clearly proved to be guilty either by positive testimony or by the proof of such circumstances as are irreconcilable with any other supposition than that of his guilt; and this principle applies to offences of every description, no matter how trifling or aggravated they may be, the degree of certainty necessary to warrant a conviction is in all cases the same. But we have been told by the Commonwealth's council that atrocious crimes are committed in secret, and that the more secret their commission and aggravated their nature, the more weight is due to circumstantial evidence; from which it follows that testimony which might not be sufficient to convict a man of larceny, would warrant his conviction if on trial for his life. It is true that the community have a deep interest in the detection and punishment of crime; but they have a greater interest in protecting their citizens against the punishments which belong to crime, until all doubt of their guilt shall be removed. The secrecy with which an offence is committed cannot add to the intrinsic weight of any circumstance going to point out the perpetrator, and the necessity of the community no more requires that undue weight should be given to any circumstance for the purpose of procuring a conviction, than it does a conviction without evidence or trial. Humanity requires that when life is at issue, and an erroneous verdict may soon place the prisoner beyond the reach of human relief, there should be the greatest caution and certainty. Should a jury err in finding a man guilty of an offence punishable by fine or imprisonment, on a discovery of their error, amends may in some measure be made for the injustice done him; but should you in this case err against the prisoner you will do him an injury which will be susceptible of no redress; an executive pardon cannot reach him in the grave, nor could the regrets of this jury for having consigned him to an ignominious and unmerited death, restore life to his ashes.

Indulgence at your hands is not expected, neither do we expect undue severity. The prisoner has laboured under great disadvantages. Since the 28th of February, he has been in confinement without either money or friends to enable him to prepare for his trial, the family of the deceased being numerous and wealthy and feeling themselves deeply injured, have omitted no circumstance which could be brought to bear upon this prosecution; a prejudice has been excited against the prisoner which is unparalleled in this county and neither pains nor expense have been spared in the employment of counsel and the collection of evidence against him. When therefore we say that it is not for us to prove innocence, but for the Commonwealth to establish guilt; we shall only claim that which belongs to a prisoner in any case, but which in a case where the means of defence are wanting, must necessarily be his sole reliance.

With these preliminary observations I will proceed to the consideration of the testimony in the cause. The first step in a prosecution for murder is to establish the commission of a homicide, and the next to trace it to the accused. If there has been no criminal act it is useless to search for a guilty agent, and the testimony to establish the homicide must be as conclusive as that which is required to ascertain the perpetrator; if a reasonable doubt exists with regard to it, that doubt is fatal to the prosecution. A number of witnesses have been examined to prove the position and appearance of the body, and so far as relates to the marks of violence they must have convinced you of the great uncertainty of all human testimony, and how frequent it is for witnesses who have formed an opinion themselves, honestly to testify to facts which exist only in their own imaginations. Dr. Gross who made the *post mortem* examination and testified from a memorandum made shortly after, describes the marks upon her throat as consisting of an indentation on the right side of the neck of about a half an inch in length and a twelfth of an inch in width, and a slight abrasion of the skin on the upper part of the wind-pipe, and states that there was no discolouration upon the throat resembling finger marks; while some of the other witnesses describe the neck as skinned from ear to ear, and exhibiting apparent marks of a thumb and fingers. The testimony of Dr. Gross cannot be reconciled with that of the other witnesses, and consequently either his testimony or theirs must be rejected. If you believe that his description of the marks upon the neck is as different from their true appearance, as his description of them is from that of the other witnesses, then you can place no reliance upon any part of his testimony, and as he is the only witness that speaks of the internal appearance of the



body exhibited upon dissection, upon that subject you will have no testimony at all which can be relied on. To sustain a prosecution by rejecting that part of a witness's testimony which is favourable to the prisoner, and adopting whatever is against him, would be acting in direct opposition to a peremptory but most humane principle of the law, which requires that doubt shall be always construed, and constructions always made in favour of the accused. As the testimony of Dr. Gross appears to be chiefly relied on by the prosecution for the purpose of proving a homicide, and as it is evidently more probable that he is correct than the other witnesses who paid less attention to the matter, we will lay their testimony out of view, and suppose his statements to be correct. He has described both the external and internal appearance of the body, and given it as his opinion that the deceased came to her death by manual strangulation. His opinions as a medical man have been received as evidence against the accused, and we have no objection to their receiving all the consideration to which they are entitled. His opinion is undoubtedly evidence, but it is not conclusive evidence; and as he has given us the facts and circumstances from which his opinion is formed, other medical gentlemen are as capable of drawing correct conclusions from them as he is. Dr. Gwinner has testified that from the appearance of the body as described by Dr. Gross, he would have doubts as to the manner in which the deceased came to her death; and says that the distention of the blood vessels and livid appearance of the body as described by him, are common in cases of sudden death, and will be found in most cases of death by apoplexy and convulsions. You will bear in mind that Dr. Gross is a young and inexperienced physician, and that in matters of opinion it is extremely dangerous to rely upon the testimony of inexperienced men. (Mr. Rees here referred to Capt. Doneylaus' case in the appendix to Phillipps's evidence, page 22.) Dr. Gwinner is an experienced physician and has spent near four years in the alms house and hospital of Philadelphia, and has had every opportunity of obtaining the information necessary to enable him to form a correct opinion, and when he has doubts in matters where he is peculiarly competent to judge, you I trust will hesitate long before you will say that you have no reason to doubt. You will also recollect that Dr. Gross did not examine the head, and that Dr. Gwinner tells us, it is there that the seat of the disease is to be found, and that an examination is imperfect without it. There are I believe frequent instances of persons falling in a fit and expiring without a struggle, and the circumstance of the comb of the deceased being broken in pieces and lying immediately under her head, and of her body and limbs being in a composed state, furnish strong reasons to believe that she died in that way. If, as is contended, she had been carefully laid out after death, her head would in all probability have been moved, and the pieces of her comb would have been found a short distance from it. If you are not satisfied beyond doubt that a homicide has been committed, it will not be necessary for you to enquire further; but if you are fully convinced of that fact, it then remains for you to enquire whether the testimony proves conclusively that the accused committed it.

It is said that the prisoner had a motive for committing the murder; that he sought an opportunity for doing it; which was found and embraced. It is said that he had an aversion for his wife whom he was forced to marry, and an affection for another woman; that all his hopes of happiness appeared to rest upon a contemplated matrimonial connexion with her who was the object of all his affections, and that this connexion could only be affected by first depriving the deceased of her life. That he ever had any peculiar aversion to his wife we deny; and that he ever had any affection for her we do not contend. When arrested and taken to the house where she lived, he stated that he thought it very hard that he must marry her as he was promised to another; he shed tears and appeared very unwilling to marry her. When brought before the Justice he still appeared unwilling to marry; but being told that he must either marry her, give security for his appearance at court, or be committed to gaol, and having no security, he consented to marry her; and only so consented because he loathed the thought of becoming an inhabitant of that prison in which he has since spent many an unhappy day. Much has been said in this case about his neglect of his wife and refusal to provide for her as an affectionate husband. The duties of a husband belong to that union which is the result of mutual affection, free will and honourable motives—our law contemplates no other; and to expect the same conduct from a man who was forced to marry, as from one voluntarily wedded to the object of his choice, would be unnatural; it could not be expected that the ceremony of marriage would instantly render one female the object of his love, and obliterate his affection for another. The counsel who opened this case on the part of the commonwealth, stated, that the connexion between the prisoner and the deceased, commenced in crime and terminated in blood. How it terminated we do not know, but if he considers the marriage as its commencement, we agree that it was criminal, for she compelled him to form it. If he alluded to what occurred previously, I can only say that it is no part of our duty or object to satisfy the jury that Charles Getter was entirely exempt from the follies and indiscretions of youth. What occurred previous to the marriage at a time, when he could have had no motive for the commission of the crime with which he is charged, is not worthy of your consideration. All the expressions which were made by the prisoner in regard to his wife and to his getting clear of her, were made openly and publicly, and with no injunction of secrecy. Whenever spoken to upon the subject, he always said he would not live with her; that he had an attachment for another woman, and could not be reconciled to live with his wife. If he was then meditating any personal injury to her, it cannot be supposed

that he would have stated his intentions to every one that spoke to him. In all his conversations, there is nothing but what might naturally be expected from a man in his situation, and nothing which excited a suspicion that he intended to do his wife any injury. Even so late as the Sunday previous to her death, he enquired of a Justice of the peace how he could get clear of her, and it cannot be supposed that a man in his senses would be speaking about getting clear of his wife, if he intended to murder her within a few days. All the witnesses say that he never threatened to do his wife any injury—and as to the manner in which he expected to get clear of her, it appears that he at one time thought he could accomplish it by advertising her. Finding that this would not answer, he next spoke of getting a divorce. But being told that he could not affect this, he at last resolved to work until he could pay his debts and then remove to Jersey. The reasons why he supposed that he could get clear of her by advertisement and divorce, although not stated by him, clearly appear from the evidence. One of the Commonwealth's witnesses told him, that before his marriage he had seen another young man with his wife in a room in which there was a bed; and another stated to him, that he had been informed by a female that she was not with child, and the prisoner being ignorant of the mode of obtaining a divorce and the time it required, supposed that upon its appearing that she was not with child, or if she was that he was not its father, that he would at once be free; and when he spoke to Mr. Brader about getting clear of her in three weeks and in one week, he had no thoughts of getting clear in any other way than those I have mentioned. Every man is in pursuit of some favourite object, and it cannot be supposed that he will take the life of whoever stands in his way to wealth, power, or whatever lies nearest his heart. The prisoner's affection for Mary Hummer was formed when he was single, and in it there was nothing improper or dishonorable; and it is not the nature of man to forget old favourites in a day. It is absurd and unnatural to suppose that because all his feelings and affections were not changed in a day, or an hour, that they would lead him to the commission of a crime which would cost him his life and at which nature revolts. The Commonwealth have totally failed in establishing a motive, unless it is supposed that human nature is so degraded, that even youth can take life in cold blood from the most trifling motives.

It is next attempted to prove that he sought an opportunity for committing the murder; and to establish this, it is proved that shortly before his wife's death, he professed to have changed his intentions, and stated that he believed that he would live with her. He did not say positively that he would live with her, he only said he believed he would; and at all events it is of no consequence, as the testimony shows that she sought every opportunity of seeing him, and was ready at all times to go any where and every where to see him. If he was disposed to take her life, no professions of that kind were necessary to furnish him with an opportunity. They therefore lose all their weight, as they can only bear upon this case by supposing them to have been necessary to bring her within his power, which was not the case. The meeting at Bunstein's on the Saturday preceding her death, was not sought by him; It appears clearly that she sent him word to meet her, and the interview was one of her seeking and not his. What conversation took place between them does not appear, and because nothing in regard to it is proved, (except what the prisoner has always admitted, viz: That he agreed to assist her in moving, provided she would let him know the time,) it is contended that you have a right to presume that any appointments were made and any conversations took place, which will be the most unfavourable to the prisoner. If this case is to be decided according to what is proved, the meeting at Bunstein's may be laid out of view; but if it is to be decided according to what may be presumed, our time is uselessly spent; for you may as well presume the prisoner innocent or guilty at once, as to presume facts from which a verdict will be formed.

We now come to the important part of the case, which is the time of her death. It appears that the prisoner left Philip Clauss's house where he was at work, on the evening of the 27th of February, between 6 and 7 o'clock; a number of witnesses say, they had supper about six, and after supper Getter left there. One witness says he left there at a quarter past six by Clauss's clock—when he left the house he went towards the barn, which is in the opposite direction from both Heil's and Wagener's, and was not seen there again until the following morning. He arrived at Philip Heil's at half past eight o'clock, or probably five minutes more; and as there is a difference of 14 minutes between the clocks at Clauss's and Heil's, the time occupied in going from one to the other, which is a distance of about four and a half miles, was about two hours. The distance from Clauss's to Wagener's three miles sixty perches, from Wagener's to where the body was found one hundred and nine perches, from where the body was found to Heil's four hundred and seventy-four perches—making the distance from Clauss's to Heil's by the way of Wagener's five miles and three perches. The prisoner in his examination before the Justice, stated that he went directly from Clauss's to Heil's and did not meet any person on the road; and it is contended by the Commonwealth, that he went by the way of Wagener's and murdered his wife before going to Heil's. The testimony which is vainly relied upon, is that of David Wagener and John C. Mixsell. The former states, that the deceased left his father's house at half past eight o'clock in the evening, for the purpose of going to Adam Wagener's, a distance of 14 rods; that when she went out some person was heard speaking at the door; he then got up and went to the window and saw Charles Getter standing with the deceased, and they walked off together. Daniel Wagener saw two persons going towards Peter



Wagener's, but could not identify them. The deceased went into Peter Wagener's and remained there for about 15 minutes; when she went out, Mrs. Zearfass went with her to the gate, and saw her returning half way up the garden towards Peter Wagener's. This is the last that was seen of the deceased until her dead body was found. John C. Mixsell testifies, that he saw Getter crossing the Bethlehem road from towards Wagener's, and going in the direction of Heil's. With regard to the testimony of David Wagener we say it is incorrect, and whether that incorrectness has proceeded from design or mistake, is a question for you to decide. He has undertaken to swear positively to the identity of the person he saw; although as he states he was 22 feet distant from him, and looking through the window of a room in which there was a light—he has even sworn to the color of his pantaloons, the color of his roundabout, and the color of his hat, and the shape of the brim. It is much relied upon, that he swears positively that it was Charles Getter he saw that evening, and if you believe that he is not liable to be mistaken as all other men are, this will no doubt have great weight. But when a witness swears positively in a case where it is evident that he may be mistaken, it affects his credit and diminishes the weight of his testimony. This case rests entirely upon circumstantial evidence, and the law is explicit, that every circumstance must be proved with the same degree of certainty as is required to support the issue itself, before a jury have a right to draw any inference from it. Whether David Wagener may not have been mistaken in the person he saw, is a question which your own experience will enable you to decide. If there are not frequent instances of persons being mistaken in supposing one person to be another, where they have had better opportunities of seeing and knowing, than were possessed by David Wagener in this case, then the fact that he saw Getter may be considered as established, provided you believe him to be a credible witness. But you will bear in mind that when examined before the Justice, he swore that when he first saw Getter he was standing with his back towards him, that he turned round towards where he stood and said to his wife "come," and walked off; and when examined in court, testified positively that when he first saw him, he was standing with his face towards him, persisted in it, and denied having ever made a contrary statement—and after the justice proved that he did testify before him that he had his back towards him, Wagener then comes before the court and acknowledges that he had his back towards him, and says that the reason why he did not say so before, was that he thought it unnecessary as he afterwards turned around. Can you believe that the reason he assigns is true—that when asked over and over again whether he had not his back towards him when he first saw him, that he did not know it was necessary for him to speak the truth, and was justified in stating a falsehood? It is evident that he wished to make his testimony as strong as he could against the prisoner; and as he has, after we had proved that he had stated an untruth, admitted it himself, his testimony is entitled to no weight; life should not be taken upon suspicious testimony. You will also recollect that he did not describe Getter's clothes until he had seen him the following day; and that the clothes he describes were the clothes Getter then wore, and it is evident that he identified them from seeing them then. The memory of man is treacherous, and the testimony of men generally grows weaker by the lapse of time—many circumstances which are fresh in their memories shortly after they occur, will soon fade away or be forgotten, and when a witness's testimony grows stronger every day, it shows that he swears to what he would like to know, instead of what he actually does know. If this trial had been postponed for a year, it is impossible to say what some of the witnesses would have testified to, for it appears to be the prisoner's misfortune, that what at first is supposed, is afterwards believed, and finally sworn to; while any thing that can be supposed to operate in his favour, is soon forgotten. Although the testimony of this man, even if believed by you to be true, would be calculated to prejudice the prisoner by contradicting his statement, yet it is not at all irreconcilable with his innocence, as will appear when we come to consider the time when he is said to have been seen at Wagener's, the time when the deceased left the house of Adam Wagener, and when the prisoner arrived at Heil's.

The next account we have of Getter, is from John C. Mixsell—and gentlemen, whatever opinions may be formed with regard to the guilt or innocence of the prisoner, there is one fact which every man who has heard the evidence in this case, must admit, viz: That John C. Mixsell, has committed wilful, premeditated, and barefaced perjury. I am not disposed wantonly to wound the feelings or injure the character of any man. But a sense of duty requires that in this case I should openly say, that John C. Mixsell has committed perjury, and that of the most odious character. Murder is a crime at which nature revolts. To cut off a fellow being without warning, and hurry him unprepared to that judgment which awaits us all beyond the confines of this life, is an offence against which every hand and voice in the community should be raised, but the odious character of which the counsel for the Commonwealth have found words to portray. But to paint in true colours the infamy of that man who can come into a court of justice, and after appealing to his God for the truth of the testimony he shall give, state a deliberate falsehood, for the purpose of bringing innocence to the gallows, is what the prisoner's counsel feel themselves utterly unable to do. You will recollect that he stated before the Justice, that he met Getter a considerable distance this side of Bunstein's, and described his clothes, which were entirely different from the description given by the other witnesses, and persisted in saying that Wagener was wrong when he averred that Getter had on a roundabout.

This testimony, although untrue, would not have injured the prisoner, as the place where he stated he had seen him, was one where it was not likely the prisoner could have been, ever if he had been passing from where the body of the deceased was found to Philip Heil's; and because the coat which he alleged he had on was one which it does not appear that he ever had worn in his life. When he is brought into court, he swears that he saw Getter in the woods, or on the other side of Bunstein's, and adopts the description of his clothes which had been given by David Wagener. Shortly after, the body of the deceased was found, he expressed his regret for being detained on his road home, and said if he had come past where this transaction occurred earlier, he might have seen something; so that he has given three different accounts of his coming by there, and what took place. Before the Justice, he stated that he left Heffertown about sun down, and was detained at Freeman's until after supper time. He stated in court that he left Freeman's at sun down, and denied having ever made any of the statements before Esquire Weygandt, which that gentleman proves that he did make; his statement of what occurred in jail is not confirmed in any material part. It appears from the testimony of Francis Gwinner, that he boasted in the Easton Hotel, that when he first met Getter in jail, he told him—you are the very d——d rascal that killed your wife—and, although it appears this is untrue, yet a man who would boast that he had insulted a prisoner in chains, although he may want an opportunity or the courage to do it, yet would certainly be mean enough to do that or any other disgraceful act. You have his account of his having seen a spook near the place where he alleged he saw Getter. You have also heard the testimony of Juliana Leitz, who stated before you, that as God was her judge, the deceased, after she had been dissected, upon Getter's touching the body, at her mother's request, smiled and bled; and we have too much respect for you to suppose that you would pay the slightest regard to the testimony of either of them. Although they cannot convict the prisoner, they have condemned themselves to infamy. It is not their testimony that we care for; but we believe that by exciting prejudice and feeding superstition, they have tainted the testimony of other witnesses; and we trust that this circumstance will not be forgotten by you in forming your verdict. I believe that I have now gone over that part of the testimony on the part of the Commonwealth which goes to excite suspicion against the prisoner; and I will now refer to that part of it which conclusively proves his innocence, by establishing an alibi.

Great pains have been taken on the part of the prosecution to prove distinctly the time when it is alleged that the prisoner was seen at Wagener's—the time the deceased remained at Adam Wagener's, and also the time when the prisoner reached Heil's.—They have proved it all beyond doubt. The testimony is positive, uncontradicted, and admitted. The different clocks, it is proved, had run regularly from the evening of the 27th of February, until the time when they were compared, and the difference between them ascertained by John Lawall, the brother of the deceased, and the active man in this prosecution. David Wagener testifies that it was exactly half past 8 o'clock when he saw Getter at Peter Wagener's; by the testimony of Philip Heil, it could not have been later than 35 minutes past 8 when Getter came to his house. Lawall proves that there was a difference of 23 minutes between Wagener's and Heil's clocks. So that there could have been but 28 minutes from the time that the deceased left Peter Wagener's until the prisoner arrived at Heil's. You will recollect that several witnesses, who are uncontradicted, state that the deceased remained about 15 minutes at Adam Wagener's; Mrs. Zearfass states that she went with her to the gate, and stood there talking with her a for a couple of minutes, and saw her pass half way up the garden; so that from the time she was last seen until the prisoner arrived at Heil's, was not more than ten minutes—and before you can find a verdict of guilty, you must say, that in that space of time he could have enticed the deceased to go with him more than a quarter of a mile, and as she was in an advanced state of pregnancy, she must necessarily have walked slow—that he then took her life by strangulation, and laid her body and limbs in a composed state, and afterwards travelled a mile and a half over hills and fields to Heil's, and there appeared, as he usually did, without exhibiting any signs of warmth, or of being out of breath. This, gentlemen, is the testimony on the part of the Commonwealth, and we are perfectly willing that you should make your own computation of the time from the notes of any of the counsel on the part of the prosecution. You are soon to decide this cause according to the evidence, which clearly proves an alibi, and can you, in plain and direct opposition to the testimony of the Commonwealth, undertake upon mere circumstantial evidence, to presume a man guilty of an offence punishable with death. To find a verdict of guilty, you will be required not merely to supply the want of proof by presumptions, but to presume against the evidence. Life is dear and infamy dreadful—and before you find a verdict which will cost the prisoner the one, and consign him to the other—and as you regard your own happiness, the safety of society and the laws of your country, you should require testimony which is clear and uncontradicted. Do not, then, convict a man who is proved to be innocent. Ten minutes would not have been more than sufficient to have committed the murder—a man undertaking an act of that kind, could not and would not have left his victim until the last spark of life was certainly extinct. An alibi is distinctly proved, which is the strongest evidence of innocence that a prisoner can ever offer; besides, it does not appear at what time she died: the night was cold, and her body, as stated by Dr. Gross, was not frozen; from which it is most probable



that she died in the latter part of the night, when Getter was certainly at Heil's. Does it not appear strange that the deceased, if her husband was out of doors waiting for her, should have remained at Adam Wagener's 15 minutes, when it is proved that her business did not occupy one minute? This circumstance, of itself, shows that David Wagener was mistaken in the person he saw with her. But if you should believe that he is correct—if Getter had gone immediately to Heil's, he had time enough to do it; but taking off the time that the deceased was at Adam Wagener's, and the time which would be required to seduce her from home, and walk to the place where her body was found, and strangle her in the manner contended for, he could not have reached Heil's at the time he did. The facts are not merely reconcilable with innocence, but are irreconcilable with guilt. In regard to the alleged secrecy of this transaction, it appears to me that the Commonwealth have totally failed in proof. The night is said to have been nearly as light as day, and yet it is proved that the person who was with the deceased at Peter Wagener's, must have walked within a few feet, and immediately in front of two windows of the room in which the family were sitting; and if David Wagener could distinguish him at the distance of twenty-two feet as well as by day light, he was liable to be seen by the whole family, who could identify him as well as David could, at more than twice the distance. Adam Wagener has also a large family, and it is said that the prisoner went with the deceased to his house, and in going there passed some distance upon the public road. A person going to these houses in the middle of the day when the families are at work, would be much less likely to be seen than in going early in a moonlight evening, when they are all in their houses, and the windows open. It is said that he went along the public road with the deceased to the field where her body was found, and although the body could not be seen from the road, it laid so near to it that any person passing could have heard her dying groans, and have come to her relief; and in passing either to or from her body, a person could be seen for a great distance both from the road and the surrounding country. And yet we are told that it was committed in secret. If this is secrecy, I do not understand the expression; nor do I think it would be easily distinguished from what is usually termed publicity. This secrecy is talked of only for the purpose of imputing to the prisoner a cunning which he never possessed. If he was bent on crime and sought secrecy, the Commonwealth would have had but little evidence against him, as their testimony consists chiefly of declarations publicly made, and acts openly done. When the prisoner was arrested and taken before the magistrate, he promptly answered every question put to him, and his statement has never been contradicted, which in cases depending on circumstantial evidence, is a strong proof of innocence.

I have now gone through with the evidence in the case, and it appears to me, that independent of the evidence in the prisoner's favour, the Commonwealth has not made out such a case as will warrant you in finding a verdict of conviction. If, however, you should be of opinion that the prisoner is guilty, do not let that opinion induce you to find a verdict against him, until you are fully satisfied that your opinions have been formed from facts which have been clearly proved, and exclude all possibility of innocence. To err, is one of the frailties of mankind; but it will always be a consolation to any man that errs upon a trial of this kind, that his error was on the side of humanity and in favour of life.

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## SPEECH OF JAMES M. PORTER, ESQ.

FOR THE PRISONER.

[The reporter regrets that he is unable to present as full and accurate report of the very able speech of Col. Porter, as of the other counsel. A report of his speech had been prepared, and submitted to him for revision. With his corrections, it was forwarded to Philadelphia for publication; but owing to some accident or other, has never been received. The pressing avocations of that gentleman, and his present severe indisposition, have rendered it impossible to obtain a second report of his speech with the same advantages. He has, however, kindly favoured the reporter with his brief; from which, (though a mere anatomy of his speech,) and from the reporter's own recollection, the following report has been prepared. No opportunity has been had of submitting it to him for revision. These facts the reporter offers as an apology for all the defects which will be observed in the following report.]

*With submission to your honours—*

GENTLEMEN OF THE JURY—I arise to perform the last duty of a counsel to the prisoner at the bar, under circumstances of a nature peculiarly embarrassing. Labouring, as I have done for some days past, and as I now do, under extreme debility, I feel that I shall be able to discharge but inadequately, the duty I owe to the unfortunate

man who is the subject of the present charge. I do not say this to excite your sympathy in my behalf; but offer it as an apology for the feebleness of my exertions. Of all the situations in which a man can be placed, none is less enviable than that of a counsel entrusted with the defence of the life of a fellow-being. It is a situation, which nothing but an imperious sense of duty, could ever induce me to assume. The reflection of having acted in discharge of such a duty to the prisoner, will amply repay whatever labour and anxiety its assumption may have occasioned. If ever a man needed a friend, that man is the prisoner. He stands before you alone—deserted by all the world—without a friend to administer to him consolation under his present afflictions—with none to sustain him under the fiery persecutions of which, for a long time past, he has been, and is now, the subject. This prosecution has been urged with a zeal, which no considerations of public utility can justify. It has been converted into an engine of private resentment. The exalted purposes of the law, have been prostituted to subserve the most unhallowed ends. It has been mentioned, as an indication of the advance which has been made in civilization and improvement, that accusations are now conducted by public prosecution; that no avenger of blood, no widow, or next of kin, prosecuting by appeal from the impulse of private passion, or a spirit of revenge, are now heard in courts of justice! In form, these things, indeed, have passed away; but in substance, they have been exhibited in the present trial. The relations of the deceased are numerous and wealthy, and they have brought all their wealth and influence to operate against the prisoner. Since the institution of the present prosecution, they have been unremitting in their exertions to secure his conviction. The country has been scoured for testimony; the prejudice of the community has been kindled and cherished; the ablest counsel of this bar have been retained; and could their gold have operated with the same effect elsewhere, the counsel who now addresses you, would likewise have been among the number arrayed against this devoted man. But neither my amiable colleague nor myself are actuated in our exertions by such a sordid stimulus. Their treasures, when placed in competition with what we conceived to be our duty, possessed no attraction; and for my own part, I can say, that I would sooner be what I am—the unpaid counsel of Charles Getter—than to be retained, though it were with all the wealth of his enemies, to demand his blood. The prisoner has had means, neither to fee counsel, nor to counteract the machinations of his enemies. He has moved in an humble sphere in society, and been always dependant upon the labour of his hands for his daily bread. Destitute of friends, and immured within the gloomy walls of a prison, where his solitude has been interrupted only by the intrusion of those, whose object was to spy upon his conduct, the prisoner has had no opportunity of collecting testimony in his behalf, or of mitigating the violence of public prejudice.

We have much reason to complain of the conduct of the prosecution in this case. The counsel themselves seem to be aware of the impropriety of their conduct. The gentleman who last addressed you, in behalf of the prosecution, occupied no less than twenty minutes in apologizing for their zeal, and in attempting to extenuate that part of their conduct, which they considered as most particularly obnoxious to censure.—The counsel who opened the case to you, in order to influence your minds against the prisoner, resorted to means which he must have known to be improper. He alleged many things which could not be given in evidence; but which, by his stating them to you, must necessarily become so blended in your minds with the testimony, as to render it almost impossible to separate them. Again, among the other inordinate means resorted to by the counsel in their zeal, has been their numerous attempts to introduce illegal testimony. This produces a result precisely similar to the other. The offer is heard, and whether received or rejected by the court—whether susceptible of proof, or a mere fabrication—the circumstances it sets forth become incorporated in the mind with the general mass of testimony, and your information, by this means, is poisoned at the fountain. It is unnecessary for me to comment upon such conduct. Its design is no less apparent, than its impropriety. Permit me to remind you, that you are sworn “to render a verdict according to the evidence.”

The first subject of inquiry in the present case is, whether or not a homicide has been committed. If a homicide has been committed, we are next to inquire who was the author of it.

1. Has a homicide been committed? If the evidence is not sufficient to satisfy your minds that a homicide has been committed, there is an end of the case; for, as my colleague very correctly observed, where there is no criminal act, it would be absurd to search for a criminal agent. The evidence on this subject, is not only unsatisfactory, but very contradictory. The position in which the body lay when it was found, is described by Esquire Weygandt—the head was lower than the body—the comb was broken under the head. He observed red marks upon her neck, but has not described them. His testimony, therefore, on this point, amounts to nothing. David Wagener's is the first testimony of any importance on this subject. He has also described the situation of the body when he found it; but testifies to no marks of violence, except that the handkerchief, which on the evening previous was tied on her head, was found around the neck of the corpse. In what a variety of ways might not this change in the position of the handkerchief have been produced? She might have fallen in the attempt to climb over the fence, and, stunned by the fall, have removed the handkerchief, to catch the air. This is one of a variety of ways in which it may be accounted for. Another mark of violence, testified to by a number of witnesses, is, that her comb was



broken in pieces. This, too, might have been occasioned by a fall. But it is said, on the part of the Commonwealth, that it was caused by repeated blows against the ground. This supposition is annulled, by the fact, that no bruises were discoverable upon the back of the head, which would be the necessary consequence of such blows. But again, we are told by Dr. Gross that her hair was dishevelled. You will remember, that Dr. Gross did not see the body until after it had been carried to the house, in a wagon, in which she lay upon her back. We need, then, search for no conjecture to account for this.

I have now considered all the circumstances which have been converted into marks of violence, except the wounds said to have been observed upon her neck. The first witness called to testify particularly upon the subject of these marks, was Dr. Gross; and as his is the only testimony, upon this subject, to which you can accord any credit, I shall take the liberty of reading to you the whole of it, as it is upon my notes. [Mr. Porter here read the whole of Dr. Gross's testimony.] The counsel for the commonwealth have told you, that you are to rely implicitly upon the testimony of Dr. Gross,—that you are to adopt his opinion as to the manner in which her death was occasioned. Dr. Gross is a young man, and, on such subjects as this at least, inexperienced; he has been but five years a graduate of medicine; had never examined a case of death by strangulation; nor has he ever, as he tells you, seen a case of death from apoplexy or epilepsy:—all these facts are to be taken into consideration, when you come to weigh the opinion of Dr. Gross. He tells us in one part of his testimony, that there is no way of ascertaining the fact that apoplexy has taken place, without examining the brain,—and that he made no examination of the brain. How, then, can he affirm that the death of Rebecca Getter was not caused by apoplexy? His opinion has been formed by an imperfect examination of the body; and he has spoken with certainty upon subjects which have been matters of doubt with the most eminent of his profession. One thing it is important to observe, that he whose testimony upon this point is mainly relied upon by the prosecution,—who made a more particular examination of the body than any one else,—says that he observed *no finger marks* upon the neck, in which he is contradicted, I believe by all the other witnesses who testified upon this point. This fact is mentioned as one instance of discrepancy in their testimony, and of the incautious manner the witnesses have testified. *Doctor Sigman* in his testimony tells us, that under the chin the skin was chafed off, as if it had been scratched; it appeared to him as if the thumb was on one side, and the fingers on the other—that on the other side, it was marked down as wide as four fingers. Dr. Gross says that he could perceive no indentation on the left side of the throat. John Burt, another of their professional witnesses, says the skin was off “as far as a man could grasp,—from back of the sinews clear round and under the chin all off;” he could plainly see the thumb-nail and finger marks on the other side. Eben Owen does not venture quite so far,—but he makes the left right, and the right left, and has greatly exaggerated the appearance of the marks upon the neck, if we take Dr. Gross's opinion of them to be correct. Here, then, we have by the different doctors, as many different accounts as John Mixsell has given us versions of his story. I must say that I have never had my confidence in parol testimony so much shaken as in the present case. On the subject of the appearance of the neck, you must necessarily reject the testimony of all the witnesses except Dr. Gross—and his opinion, we think has been fully counterbalanced by that of Dr. Gwinner. Dr. Gwinner's experience has been much greater than that of Dr. Gross; it may be doubted whether any other physician, in this part of the country, has had an equal degree of experience. He has been for years in the Alms House at Philadelphia, and has seen cases of death by strangulation, as well as by apoplexy. The day of his examination before you, was a proud day for him; as soon as his name was called, messengers were instantly despatched for Dr. Gross and Dr. Swift, who were present during the whole of his examination. Dr. Gwinner has said, that from the appearance of the body, as described by Dr. Gross, he would have doubts as to the cause of her death; that he would not undertake to say what was the cause of her death; and he gave you his reasons in a very lucid and satisfactory manner. Why was neither of the other physicians called to contradict him? It was impossible for them to do so. The counsel for the prosecution have acquiesced in his testimony, or they would have attempted to refute it;—and when he doubts, can you be certain? [Mr. Porter here read and commented upon the quotation made by Mr. Brooke from Paris and Fonblanque.] There are many ways in which the death of Rebecca Getter might have been produced,—but it is not for us to account for it. Physicians themselves do not understand all the modes by which the vital principle may be extinguished.

“Our life contains a thousand springs,  
We die if one be gone.”

But there are many circumstances attending the death of Rebecca Getter, which render it improbable that it should have been caused by strangulation. Where she was found, there she died. The spot was among the last which would have been selected for the commission of such a deed. It is in the immediate vicinity of a public road,—much travelled—within sight, from a number of houses. It is alleged that she was murdered early in the evening,—an evening “bright as day,”—when, as one of the witnesses has said, you might see two miles. Is it likely that a murder would be committed here? It is a law of nature, that every living being will resist to the utmost, an at-

tempt upon its life. Where were marks of such resistance upon the body of Rebecca Getter? It was a calm, cold evening—all was still and tranquil—the least noise would be audible—who heard her screams?

Gentlemen—It was stated to you by the counsel in his opening, that this case was made up partly of circumstantial, and partly of positive testimony. Had the counsel have meditated a moment upon the signification of these terms, I am sure he would not have said this. There is, in this case, not a particle of positive testimony. If the prisoner is convicted of this crime, it will be upon presumptions and conjectures.—Positive evidence is that which attests the matter in issue. Here, it would be the evidence of a person who saw the alleged murder committed. Have we had any such evidence? No: Inferences are here first drawn from remote collateral facts—doubtful in their character, and ill-attested by the witnesses. Upon these inferences, conjectures are built—vague and uncertain, and which are not warranted by experience. A presumption, and this case at best is a tissue of presumptions, may be defined to be, an inference as to the existence of one fact, from the existence of some other fact, founded upon a previous experience of their connection. A resort to presumptive proof, is an admission that positive evidence cannot be produced—that the fact cannot be demonstratively evinced; for it is said, that when the fact itself cannot be proved, that which comes nearest to the proof of the fact, is the proof of such circumstances, as necessarily or usually, attend such facts, and these are called presumptions, *not proofs*; for they stand instead of proofs till the contrary be proved:—(Gilbert, on evidence, 142.) These presumptions are two-fold—violent or only probable—for the light and rash presumptions weigh nothing, and, therefore, they cannot come under consideration. A violent presumption is, when circumstances are proved, which necessarily attend the fact—as if a man be found suddenly dead in a room, stabbed, and another be seen running out in haste with a bloody sword, this is a violent presumption that he is the murderer; for the blood, the weapon, and the hasty flight, are all the necessary concomitants to such horrid facts:—(Gilbert, 142—1 Ins. 66, 2 Hawkins, P. C. 438—Coke Littleton, 6 b.—Hale's P. C. 288.) Yet instances have occurred, where persons have been found under all these strong circumstances; have been convicted and executed, and afterwards discovered to be innocent:—(Mr. Porter here read the case of Bradford, from the appendix to Phillips on Evidence, 86; and other cases from the same work, 23, 27, &c.) Cases of stronger circumstantial evidence, it is impossible to imagine. These cases show how extremely cautious jurors should be in receiving circumstantial testimony; that the only safe rule for them to adopt in such cases, is, not to convict, unless the circumstances proved, are utterly inconsistent with innocence. You will be surprised when you are told, that, notwithstanding all these demonstrations of the uncertainty of such evidence, there have been some writers who have advanced the doctrine, that in cases of crimes, strong circumstantial evidence is the most satisfactory of any, whence to draw the conclusion of guilt:—(1 Phillips, 155; 1 East's P. C., 223.)—And this doctrine has been urged by the counsel for the present prosecution. Let us examine for a moment, the ground upon which it rests. "Man," it is said, "may be seduced to perjury by many base motives, to which the secret nature of the offence may sometimes afford temptation. But it can scarcely happen, that many circumstances, especially, if they be such over which the accuser could have no control, forming altogether the links of a transaction, should all unfortunately concur, to fix the presumption of guilt on an individual; and yet such conclusion be erroneous." And again it is said, that facts are silent witnesses—which cannot lie. The whole of this doctrine is one of the most fallacious that ever was attempted to be established by reason. May not perjury or mistakes be committed, in detailing the circumstances themselves? The conclusion is unsound in logic, and unsupported by experience. It is said that truth is always consistent, and that it is impossible, for witnesses by any collusion, to fabricate a series of consistent circumstances; that the attempt would be detected by the discrepancy in their testimony; and yet, in the present case, we have heard it contended, that the variations and inconsistencies of the testimony, demonstrate its truth—for it has been said that thereby, is precluded the possibility of collusion, inasmuch as the witnesses in such case, would have taken care to have framed a consistent story. I repeat it, that all the testimony in this case, is of a circumstantial character, which is manifest from the definitions of circumstantial testimony. Your duty, in this case, is very plain—unless the testimony is so strong against the prisoner, that you cannot suffer yourselves to doubt as to his guilt, you must acquit. To show that such is your duty, I will read a passage from the celebrated report of John Quincy Adams, chairman of the committee of the Senate of the United States, appointed to inquire into the conduct of John Smith, Esq., a senator from the state of Ohio.

"The question upon the trial of a criminal cause, before the courts of common law, is not between guilt and innocence, but between guilt and the possibility of innocence. If a doubt can possibly be raised, either by the ingenuity of the party or of his counsel, or by the operation of general rules in their unforseen application to particular cases, that doubt must be decisive for acquittal; and the verdict of not guilty, perhaps in nine cases out of ten, means no more than that the guilt of the party has not been demonstrated in the precise, specific and narrow forms prescribed by law. The humane spirit of the laws, multiplies the barriers for the protection of innocence, and freely admits that these barriers may be abused for the shelter of guilt. It avows a strong partiality favourable to the person upon trial, and acknowledges the preference that ten guilty should escape



rather than that one innocent should suffer. The interest of the public, that a particular crime should be punished, is but as one to ten, compared with the interest of the party, that innocence should be spared. Acquittal only restores the party to the common rights of every other citizen; it restores him to no public trust; it invests him with no public confidence; it substitutes the sentence of mercy for the doom of justice; and to the eyes of impartial reason, in the great majority of cases, must be considered rather as a pardon than a justification." (1 Hall's American Law Journal, 462.) These remarks received the decided approbation of Mr. Barry, on the trial of Desha.

To the same effect, are the sentiments of Judge Wilson, who was not only an honour to his profession, but an ornament to his country and to humanity. "In capital cases, all presumptive proof should be received with caution, for the benignity of the law holds, that it is more eligible that ten guilty persons should escape, than that one innocent person should suffer a capital punishment;" (3 Wilson, Law Lectures 177.) "It is a rule of law, that if the jury entertain a reasonable doubt upon the truth of the testimony of witnesses given upon the issue they are sworn well and truly to try, they are bound in conscience to deliver the prisoner from the charge, found against him in the indictment, by giving a verdict of not guilty. Sir Edward Coke, *in favorem vite*, exhorts jurors not to give their verdict against a prisoner, without plain, direct and manifest proof of his guilt, which implies that where there is a doubt, the consequence should be an acquittal of the party on trial;" (MacNally on Evidence, 2.) "There is a great distinction between civil and criminal law. Every thing is a doubt in a civil case, where the jury weigh the evidence; and having struck a fair balance, decide according to the weight of the evidence. This, however, is not the rule in criminal cases; for it is an established maxim, that the jury are not to *weigh* the evidence, but in cases of doubt, to *acquit* the prisoner"—(ib. 578.) One quotation more from Judge Wilson, and I will proceed to consider the testimony on the second branch of the case. "If a single doubt remain in the mind of any juror, that doubt should produce his dissent; and the dissent of a single juror, will produce a verdict of acquittal by all"—(2 Wilson's Lectures, 387.) The result of all the law on this subject, is that, where the circumstances are wholly inconsistent with the prisoners innocence, then he may be convicted;—but if it be possible that all the facts are true, and yet the prisoner not guilty, he *must* be acquitted. The rule is optional in the one instance, according to the violence of the presumption—imperative in the other, in favor of the prisoner. Here, all the circumstances given in evidence may be true, and yet Charles Getter be innocent of the crime with which he stands charged. Nothing has been proved inconsistent with his innocence, and therefore, according as your duty is marked out, by the authorities I have cited, it is your duty to acquit.

In regard to the circumstances given in evidence, we may be permitted to say, that they are numerous—many of them of such a nature, as to depend for their criminality or innocence on minute circumstances, or slight shades of difference, and often on the different manner in which the same circumstances may have affected different auditors and spectators, even if all were equally disposed to tell the truth. When, however, the minds of witnesses were so prejudiced, or their views and feelings have been such, as to cause them to imbibe improper ideas, and to give a criminal aspect to that which was innocent in itself; the defendant enters the lists with a vast preponderance against him. For it can scarcely be expected, that his own recollections will furnish him with the minutiae of facts and circumstances, which may have made little impression at the time, or that he can obtain witnesses, who watched all the transactions with so much particularity, as now to give the details of so many actions of his life.

Even though the prisoner was the person seen by David Wagener, in company with the deceased, on the night of the 27th of February, it does not follow that he was her murderer; but we deny that he was the person seen by David Wagener. He says, that Rebecca was twenty-two feet from him, and that the person in her company, was somewhat further—that he had on a brown roundabout, black pantaloons, and black hat—the witness was inside of a window;—the moon it will be remembered was in its first quarter, and set that night at 12 o'clock and 31 minutes;—at the time therefore, that he saw Rebecca leave the house, it was but four hours high. There is no other evidence that Charles Getter was there on that evening, than the testimony of David Wagener. From all the circumstances I have enumerated, it is almost impossible that he could have been certain as to the person, who met the deceased at the gate. He was looking through the window—there was a light in the room—the person was more than twenty-two feet from him—there were pear trees of a considerable growth, as high as the ceiling of this court room, ten feet to the west of the person—they must therefore, have necessarily, interrupted the light of the moon, which at best being but half grown, shed but a feeble light, and must consequently have affected his vision—he must have the eye of a hyena, to be able to recognize a person at such a distance, at such a time, and under such circumstances. He did not describe the dress the person had on, until after he had seen Getter the next day. The fact that he mentioned to the persons in the room, that "Getter was out there with Peg," is of no importance;—If he did see him, it would not corroborate his testimony—if he did not, it would not prove that Getter was there. But it is said, that on the next day, when Getter was approaching the house, in the custody of the constable, and when still at a distance, David Wagener recognized him—and this is offered as an evidence of his familiarity with the appearance of Getter's person. Every circumstance which, on the evening previous, caused him

to mistake the person, was now removed;—the clear light of day was substituted for the obscurity of the night—expectation of his approach, directed the attention of the witness towards the prisoner, and led him almost to anticipate his arrival. If he had not under these circumstances, have recognized him, he would indeed have been a stranger to his appearance. Daniel Wagener too, has made inconsistent statements of the occurrences, on the evening of the 27th of February—at one time he says, that the person he saw in company with the deceased, had his back towards the window—at another, he denies that he ever made this averment, and asserts that the prisoner during the whole time he stood at the gate, had his face towards the window. He has sworn to both—which will you believe? This is an important point, and by his misrepresentation of it, the witness has materially impaired the credibility of his whole testimony. But passing from the improbability that the witness under these circumstances, would be able to identify the person of any one, I will show you that it is morally impossible, that the prisoner could have been there at that time. He has been uniform and consistent in his statements, as to where he was on that evening. And how does he prove his absence from this place, at the time the deceased left the house of Peter Wagener? In a way which seems almost providential. Mr. Heil on that evening, took a light up to wind his clock, and then observed the time—it was half past eight, and Getter came there a few moments afterwards.

The deceased left Peter Wagener's, at half eight by their clock, to go to Adam Wagener's, which is distant a quarter of a mile. She was at least five minutes in performing this distance. When she arrived at Adam's, it consequently wanted twenty-five minutes of nine o'clock. She stopped at Adam's fifteen minutes, and tarried at the gate two minutes with Mrs. Zearfass, making sixteen minutes. It therefore, wanted but eight minutes of nine o'clock when the deceased left Adam Wagener's, the place where she was last seen. It was this time by Peter Wagener's clock, which was a half an hour faster than Heil's. Consequently by Heil's clock, it was twenty-two minutes past eight when the deceased left Adam Wagener's. When Getter arrived at Heil's, it will be remembered, it was just half past eight by their clock. He had, therefore, but eight minutes to rejoin his wife at Adam Wagener's, to prevail upon her, as is alleged, to alter her original determination, and to accompany him in a direction contrary to that which she intended to pursue; to let down the bars into the field; to strangle her to death, and to travel to Heil's—a distance of one mile and a half. When he arrived at Heil's, he was neither heated, nor did he evince any signs of perturbation! Gentlemen of the Jury, I ask you, is this possible?—Could Charles Getter have been the person seen by David Wagener, in company with the deceased? It is said that some person was heard conversing with her when she came to Adam Wagener's, and it is inferred that it was the same person who was seen in company with her at Peter Wagener's. If that person was not Charles Getter, as we have shown that it was impossible it could have been, then it is certain that he was not with her at Adam Wagener's. Who that person was, it is not for us, but for the Commonwealth to prove—But whoever he was, he left her at Adam Wagener's. It is far from being certain, however, that *any* person was heard conversing with her, when she came there—no person was seen there, and the moaning of the wind might easily have been mistaken for the subdued tones of the voice; especially as the sound was immediately succeeded by her arrival. We have listened to much pathetic declamation, upon the ardent and unextinguishable affection which the deceased cherished for her husband. But the counsel, in their eloquent appeals to your passions, neglected to advert to the fact, that she detained her husband on this evening for a quarter of an hour, shivering in the cold, without an over coat, while she was indulging in idle conversation with the females of Adam Wagener's family. She went there, it seems, to procure a sausage. The object of her errand might have been accomplished in a single minute. If her loved husband was waiting at the door, would she have unnecessarily delayed so long to rejoin him? Her long delay at Adam Wagener's, is conclusive proof that she expected to meet no one when she left there.—This is also proved by the fact, that when she left, she went in a direction contrary to that in which her body was found. It is not a fair or legitimate inference, that because her body was found in another direction, that she could only have been enticed in that direction, by one in whom she had confidence. We are not to be called upon to account for her being in that field. That is a part of the case which it is incumbent upon the prosecution to elucidate—and if in the attempt to do so, it becomes necessary to resort to inferences and conjectures, they are all, says the humanity of the law, to be in favour of innocence. Some persons, when suddenly surprized and menaced with an attack upon their persons, are liable to become confused.—In this confusion, the deceased may have repassed the house of Adam Wagener—have wandered into the fields, and there, have fallen and perished in a fit of apoplexy. The testimony hitherto, has not connected the prisoner with the deceased, or with her death—and none which follows, will do it. An attempt has been made to prove that he was seen crossing the Bethlehem road, a short distance to the east of Bunstein's, which you will remember is in the vicinity of the place where the body was found, and that when so seen, he was moving south, towards the Lehigh, in the direction of Heil's. But the witness by whom this attempt has been made, is totally unworthy of credence. His testimony scarcely calls for a serious refutation. A man who would tell an improbable story, should be consistent, and have a good memory. On the subject of the present trial, this weak and reckless creature has uttered no less than *seventeen wanton and de-*



*liberate falsehoods.\** He is contradicted by every other witness who has been examined upon the same points, and supported by none.—Is it asked what motive John C. Mixsell had for uttering these falsehoods? I know not, nor do I care.—He is married to a relation of the deceased, and has participated in all the feelings of her family on this occasion. His conduct in prison towards Getter, shows the feeling he entertains for him.—That he has uttered these falsehoods, is beyond a doubt, and he is, therefore, totally unworthy of belief. There is no evidence to warrant you in believing that Charles Getter was seen on that evening on the Bethlehem road.

Let us advert to the motives which it is said would urge the prisoner to the perpetration of such a deed. His very misfortunes have been made to furnish this. His connection with his wife was the commencement of his misery; but the subsequent events have shown, that her death has not terminated his wretchedness. It is said, that one motive for the murder of his wife, was, that he married her against his will—and that he harboured an aversion for her. You have heard it repeated more than once, that the union between them commenced in *crime*, and has terminated in *blood*. There is none who holds the base seducer of virgin innocence, in greater detestation than I do—none who would sooner execrate the artful wretch, who with his winning wiles, would worm himself into the confidence and affection of youth, innocence, and inexperience; and complete his villany by destroying his victim. But this case presents no such parties—the deceased was no virgin flower, plucked in all the lovely innocence of budding beauty, with ruthless hand, by a fell and foul destroyer. Whilst I would say nothing in derogation of the deceased, truth is no libeller, and justice to the living, requires me to say, that she had been before a mother, and yet unmarried; and that repentance had not brought her back to the paths of virtue. The prisoner is a young man, and was her junior in years—perhaps in this matter, he had been as much sinned against as sinning. From the manner in which this prosecution has been conducted, we may infer he would, but for the testimony of her first delinquency, have been stigmatized, as the foul seducer of virgin innocence. Previous to their marriage, his affections were fixed upon another. Impelled by what motive I will not say, she had him arrested and carried to Easton, when unable to give security to answer her charge, and loath to be dragged to prison, and to undergo the rigors of a protracted confinement, he after much reluctance, in an unfortunate hour for him, accepted the only alternative that presented itself. He married her—but his affections were too immoveably fastened upon another, to be withdrawn. This was his misfortune, and not his fault—he married her against his will—he regretted it, and has never held two opinions upon the subject. But what was his conduct subsequently to his marriage? He was informed by Benjamin Brader, that a female acquaintance had said, she was not pregnant—By Joseph Hackman, that he had seen another young man with her in a bed room. Was it to be wondered, that he should have little relish for her society? It is in evidence, that there was little affection between them; but did he exhibit any particular hatred against her?—He tells Mrs. John Brader, that he would lay nothing in her way, but that he would never live with her; and at the same time he tells her, that he did not believe his wife was pregnant. To Samuel Walter he said, he would pay the rent and provide for her. To Anthony Transue, that he would provide for her, but would never live with her. He never offered any violence to her—and all the witnesses say, they never heard him utter any thing like a threat against her. But he said “he would get clear of her, and would have Molly Hummer.” It will be recollected, that wherever he went, he was teased, plagued and goaded with his misfortunes. His other expressions upon this subject, however, explained the manner in which he thought to get rid of her. To Justice Weygandt, he said he would advertize her in the paper—to Mrs. Brader, in the week following his marriage, he said he would not live with her, that he would be rid of her in three weeks, he would go to Jersey; to other witnesses, he spoke of getting a divorce—some of them have testified, that he said, he wished her dead—he also, said he wished himself dead; and it will be remembered, that the witnesses to whom he said he wished her dead, were the same ones to whom he said, he would lay nothing in her way. He has been censured for having expressed the wish to communicate, himself, to Molly Hummer, the first information of his marriage. It is an evidence of feeling that he desired to do so, and disproves what has been alleged, that he is destitute of all the finer affections of our nature. On the day of his marriage too, he said in the midst of his grief that, he did not care for himself, but that he pitied Molly Hummer so. One word with regard to the reconciliation with his wife, on the Saturday previous to her death. You will recollect that he had been informed, and was under the belief, that his wife was not pregnant—that he expressed himself so to several of the witnesses. He thought he had been imposed upon by his wife, and inveigled into the marriage. Before he would consent to live with her, he wished to be convinced that she was really in that condition. He asked Squire Weygandt, if he would be obliged to live with her, *before the child was born*. On the Saturday on which the reconciliation took place, she must have convinced him of her pregnancy. His belief upon this subject will also explain his expres-

\* Mr. Porter convicted this man so conclusively of having uttered these falsehoods, and proved so satisfactorily that no confidence was to be reposed in his statements, that the Attorney General, in his reply, recommended to the Jury to dismiss his testimony entirely from their minds—saying, that he could not undertake to reprove his different statements.

sion, that "he would not be daddy"—from which the ingenuity of the counsel have extracted an intimation of a design to murder his wife. But, it is said, that they were to move on Thursday—and that Getter had promised to assist in doing so; but, notwithstanding, he was on that day, at work at Clauss's. Getter has always said, that the last time he saw his wife, was the Saturday previous to her death; she was to inform him when she would be prepared to move, and there is no evidence that she did so, or that he was informed of her intention to move on Thursday. Upon the whole, Gentlemen, this match, under the circumstances, was just such an one as was to be expected. That mutual affection from which springs all happiness in marriage was wanting. Do you remember the lament of Lord Randolph, after his unsuccessful attempts to coerce the affections of his wife?

Elizabeth never loved me—  
Let no man after me a woman wed,  
Whose love he knows he has not.

But, gentlemen, if his affections were not entirely transferred, he had at least become reconciled to his wife. His fortune was sealed, and he was determined to abide by it. There is no ground for your believing that the reconciliation between them was fictitious. The law will not sustain the inference. By that reconciliation, every motive assigned for the commission of the murder, was removed. Charles Getter had determined to become, as far as it was possible, in feeling as well as in reality, a husband. We have seen, gentlemen, from the testimony already considered, that there is great doubt upon the subject of his having been seen on that evening in her company. We now see that supposing it is certain that he was in her company, all motive for the commission of her murder was removed. But I shall show you, from other parts of the testimony, that it is absolutely impossible that he could have been in her company on that evening, and consequently impossible that he could have perpetrated her murder.

Upon what ground do they ask you to believe, that, because somebody was seen in company with the deceased on that evening, that that person must necessarily have been Charles Getter; and, that, as she was found dead, he murdered her? They say to him, "out of your own lying mouth we will condemn you—you have said that when you left Clauss's on the evening of the 27th, you went directly across to Heil's by the nearest route—that you stopped nowhere, and were not delayed upon the road—that two hours and a half elapsed from the time of your departure from Clauss's until you arrived at Heil's—that the next morning you performed the same distance in less than an hour: here is one hour and a half of your time on that evening unaccounted for; you must therefore necessarily have been at Wagener's with the deceased, on that evening, which is the first inference we draw; and because you were at Wagener's with her, you murdered her, which is the second." Gentlemen, we will show that the suppositions from which these strained inferences are deduced, are false in fact. No part of our time on that evening is unaccounted-for—we will account for every moment of it. "From Clauss's we went directly to Heil's, stopped nowhere, and saw no one." Getter has said that he left Clauss's at 7 o'clock. It must have been at least that late.—The witnesses say that they worked as late as they could see; they then washed themselves and eat supper. After supper Getter left the house. The sun set on that evening at five o'clock and thirty-two minutes. It is not dark in any season you know, until an hour after sunset, and the twilight is longest, when the days are shortest; they could therefore have seen to work on that evening until *half past six* o'clock. The witnesses say they ate supper between six and seven—one of them says, at a *quarter past six*—they ate by candlelight—it must therefore have been dark—say however that it was a *quarter past six* when they sat down, which is the earliest possible time: the strongest probability is, that it was later. It took them a quarter of an hour to eat their suppers;—this would bring it to *half past six*. Some of them left before Charles—he was yet at the table. When he left the house, it was observed that he went towards the barn, which it is said is not in the direction of Heil's; but neither is it in the direction of Wagener's from Clauss's. "He sprang off the porch and went towards the barn." For what purpose he went to the barn, you may infer from the manner in which he left the porch, and from the answer of David Wolback, to one of my interrogatories.—[See page 24.]—The barn is five or six rods from the house. When he had transacted his errand there, he returned, repassed the house, and took the road to Heil's. He has said that when he passed the house he saw no one upon the porch. Now, gentlemen, is it possible he could have passed without observing this? and yet the remark he made to this effect, to one of the witnesses, has been tortured into the expression, that he *watched* and saw no one; and it has been asked with an air of exultation, why did he watch? Another circumstance which occurred at this time, and from which an inference of guilt has been drawn, it becomes me, perhaps, to notice. It is said he knew that some of his working companions were going on that evening to Hackman's, which is on the road to Heil's, and that he did not offer to go that far with them. The witnesses tell you, that they did not all leave the house together—they went at different times, and in different directions. When Getter returned from the barn, they had all gone—I believe none who have been examined stayed there all that night; and to see if they had yet gone, might have been his object in looking particularly who was about, when he passed the porch. When they saw the manner in which he went towards the barn, they might have inferred his object, and have waited for him. But instead



of that, they went off immediately, which shows that they were not extremely anxious for his company.—Getter might have been under this impression, and therefore had no disposition to hasten on and overtake them, but rather retarded his gate to avoid them. From all the testimony it appears, too, that Getter is of a taciturn and rather unsocial disposition. When he re-passed the house, then, on his way to Heil's, we may safely say that it was seven o'clock. From Clauss's to Heil's, it is four miles and a half, or four miles and three quarters, in going which, he was one hour and a half, which is a short time enough, considering that there was no particular reason for haste—that it was evening—that he had worked all day, and must therefore have been tired. Three miles an hour, under such circumstances, is no unreasonable gate. It was said by Mr. Brown, in his opening, that Hackman has a dog that always barks when any person passes their house, and that he was not heard to bark on that evening between seven and eight o'clock. In this last assertion, he is expressly contradicted by the testimony. The dog was heard to bark, and the person at whom he barked was Charles Getter. He arrived at Heil's at *half past eight o'clock*, and stayed there all night. Thus, gentlemen, I think we have satisfactorily accounted for our time on the evening of the 27th of February. But it is said, that he returned from Heil's to Clauss's on the next morning, in less than an hour. This assertion is entirely gratuitous—it is wholly unsustained by the testimony. He left Heil's immediately after six o'clock. He did not stay to wash himself, but went away at a very rapid pace. He stopped nowhere on the road:—Passed Brader's sometime after sunrise. The rapidity of his gate attracted attention; he was almost on a run. When he arrived at Clauss's, they had nearly finished eating breakfast. The witnesses say they worked before breakfast, and eat about 7 o'clock. It is possible that, travelling as he did, he may have performed the distance in an hour; but he certainly was not less.

Gentlemen, I think we have made out as fair a case as could reasonably be required. There is not merely sufficient ground for doubt as to his guilt; but his innocence is almost manifest. Are you prepared to give your unqualified sanction to the doubtful inferences and vague conjectures of the counsel for the prosecution? Can you say, under the sacred obligations of your oaths, that it is impossible, from the facts substantiated by the testimony, that Charles Getter can be innocent of the crime with which he is charged? Is it not possible that every thing proved against him may be true, and he still innocent? If it is, the law requires that you should render a verdict of acquittal. The more you meditate upon this testimony, the more strongly will your doubts be confirmed.

Permit me briefly to recapitulate the most prominent points of the testimony, and I will then consign the prisoner to your hands. 1. It is uncertain that the deceased was murdered—the marks upon her body might have been produced by natural causes—the testimony is contradictory and inconsistent. Dr. Gross, the only physician who examined the body, was young and inexperienced—he made but a partial examination, and was, for that reason, unable to decide with certainty on the cause of her death—and his opinion is fully counterbalanced by that of Dr. Gwinner. The publicity of the place, and the vicinity of dwelling houses, render it improbable. 2. Supposing the deceased to have met her death by violent means, the testimony is not sufficient to induce the belief that she was murdered by the prisoner.—From the time and circumstances, it is impossible that David Wagener could identify the person he saw in her company.—That person, whoever he was, left her at Adam Wagener's.—But, admitting for a moment that Getter was the person seen in her company, it is neither a reasonable nor a legitimate inference, that he murdered her—the only motive which he could possibly have had for the perpetration of such a deed, was removed by their previous reconciliation. Guilt is not to be inferred—the inference must be in favour of innocence. But it is impossible he could have been in her company on that evening at Wagener's, for the time which elapsed from his departure from Clauss's until his arrival at Heil's, where he staid all night, was barely sufficient to permit him to perform the distance by the most direct route. In connection with these facts, take into consideration his declarations and his whole demeanor. In the former he has always been uniform and consistent—no variation in his statements, not even the slightest equivocation has been detected. He has never affected concealment. His cell had been open to the intrusion of every idle gossip. He was examined before the magistrate without counsel—his answers were prompt, pertinent, and unpremeditated; such only as are consistent with innocence. His demeanour, too, has not been that of conscious guilt. Is it possible, that he could have gone to Heil's immediately after the perpetration of such a horrid crime, with his hands yet reeking in the blood of his victim, and they discover nothing extraordinary in his appearance? Would not the consciousness of his guilt have manifested itself, in his demeanour on the subsequent day? Would not

“The horrid image have unfixed his hair,  
And made his sealed heart knock at his rib,  
Against the use of nature?”

When arrested and told that his wife was dead, he made the natural reply of one astonished at such intelligence—“is she dead?” When taken to Wagener's where the corpse lay, he desired to see it. Is this an indication of guilt? He was conducted into the room, and underwent, without hesitation, the ordeal of touching the body. The

superstition which required him to do so, is universally prevalent among these people, and it is impossible to suppose that he was not, in some degree at least, infected with it.

“ Guilt once harboured in the conscious breast,  
Intimidates the brave, degrades the great.”

Upon the review of all the testimony, the only conclusion to which a free and unbiassed mind can be brought, is, that it is insufficient to establish the guilt of the prisoner. Gentlemen, I have now, to the best of my feeble ability, performed my duty. I leave the prisoner in your hands—you are the arbiters of his fate. By your verdict, he lives—or dies.—You, in a few moments will be called upon to say, whether he shall be restored to liberty and the society of his friends, or condemned to an ignominious death, and sent to the silent mansions of the tomb. Your present responsibility is the most awful that can ever devolve upon you.—If you are not already sensible of it, no language can make you so—and I beseech you, for your own sakes, to pause before you pronounce a verdict which shall cause a fellow being to cease to be numbered among the living, and consign him, in the pride of his days—in the flower of manhood, to a murderer's grave. By such a verdict you may plant a thorn in your pillows which will destroy your rest for life; and you may have occasion to look back to the result of this trial, not only with sorrow and regret, but with anguish “past endurance.” The law furnishes you with an unerring guide in your deliberations. If a doubt as to the prisoner's guilt, linger's upon your minds, the rule of law renders it your imperative duty to acquit.

## SPEECH OF HOPEWELL HEPBURN, ESQ.

Mr. Hepburn concluded on the part of the prosecution, as follows:  
*May it please the Court:*

WITHOUT affectation I may say to you, gentlemen of the jury, that I arise to address you with unusual emotion, and feel deeply the responsibility of the station in which I now appear. I stand before you as the representative of the commonwealth, and am delegated to sustain without diminution, and to endeavour, with all fidelity, to procure the faithful and efficient execution of her laws. The public rights and interests of this commonwealth are intrusted to my hands; and these rights have been violated in a most essential particular. The blood of one of our citizens has been shed, and another stands arraigned at your bar, as the perpetrator of that most heinous offence. My emotion, however, does not proceed from the least reluctance to pursue the guilty, or to contribute my feeble effort in bringing to justice the violator of his country's laws; for I have yet to learn, and the lesson will be of no easy acquirement, that there is more justice or mercy in an effort to screen the guilty from their merited punishment, than in an honest endeavour to protect the citizens from further violence, by their timely conviction. But the difficulty of my situation is, that I may perform all that my duty requires, and no more. It would be as ungenerous as it would be unjust, to be over-zealous against any human being, placed in the miserable condition of the prisoner at the bar. His life may be the forfeit of his crime; but if so, let his conviction be in strict accordance with the law,—the result of his own act, clearly demonstrated by the evidence. I should then much regret, if, upon the one hand, by the warmth which may be excited by the discharge of my duty, I may be led to exceed it; or if, upon the other, I should omit to do all that the justice of the case requires. But, gentlemen, I have pleasure in the fact, that where my duty closes, your's and that of the court commences, and I am well assured, that you will correct what I shall do amiss, and supply what I may have omitted.

In the commencement of this cause, it is proper for me to state to you, that by the benignity of our laws, the prisoner is presumed to be an innocent man, until your verdict declares him to be guilty. You must take no part of the prosecution upon conjecture. The whole must be distinctly and clearly proved: and so proved, as to leave no doubt upon your minds as to the prisoner's guilt. But in the exercise of all proper mildness and moderation towards the prisoner, you must be careful not to suffer your minds to be too far biassed in his behalf. If you doubt, it must be a reasonable doubt; arising either from a defect of evidence, or from such a state of facts as are inconsistent with his guilt. It must not be such a doubt as results from the apprehensions of the timid: nor yet the dictate of a mistaken idea of mercy, which would spare the prisoner, but infringe upon the juror's oath, and do violence to the community. Weigh the testimony,—deliberate upon it with caution; bring all the powers of our minds to the task; and remember, that it is your duty to reconcile the evidence if you can, and then, if you have any reasonable doubt, that doubt must operate to the prisoner's acquittal. I do not accede, however, to the doctrine, read to you by the prisoner's counsel, from Judge Wilson's work, “That the doubt of a single juror, should produce an acquittal.” This is not, nor was it ever the law; if it was, a conviction in cases of the higher crimes, could scarcely be procured. It is but rare indeed that a case is so perfectly clear, that the ingenuity of counsel, may not raise a doubt upon the mind of a single juror,—and shall the clear conviction of the other eleven, yield to the doubt—perhaps the fear or pity—of



the twelfth? The principle bears folly and mischief upon its face; and, indeed, it has been so often reprobated by courts and juries, that it may now be considered the most foolish idea ever penned by a sensible man. I need not dwell longer upon it; such, I doubt not, will be the opinion of the court in regard to it.

The prisoner's counsel have gone at much length into the law and authorities upon circumstantial and presumptive evidence. They contend, that no combination of circumstances is equal to direct evidence. I shall not, gentlemen of the jury, weary your patience, or exhaust my own strength by attempting to examine, in detail, all the authorities that their industry has been able to adduce in support of their strange propositions on this subject. If it be true, that no man can be convicted upon circumstantial evidence, (and such is the extent to which the arguments of the defence would carry it,) then had you as well close the doors of your courts of justice, and declare at once to the anxious public that surrounds you, that strength and violence are the only authorities that govern here, and their lives and property are only safe, as they have the physical power to make them so. When and where are crimes committed in public? And is the rule reversed, that those "whose deeds are evil, seek darkness rather than light?" And shall not the criminal be convicted because he has called no witnesses to attest his deeds of blood and depredation? The record of crimes show but few instances where direct evidence of the prisoner's guilt, is obtained from witnesses who saw the transaction; and in such cases usually, there is as much of ignorance as of guilt. It is only the stupid offender, who lacks cunning to devise the means of perpetrating his crime in secret, that is openly taken in the fact. But the more artful and designing; he that can betray with a kiss; he who with the wily cunning of the serpent, can entice his victim into his power, in the darkness of the night, where there is no human eye to see, nor mortal arm to save, he, for his superior adroitness in villany—for his greater skill in crime, shall be, in the estimation of the law, guiltless, because he has done his work so well;—his victim dies, and there is none to bear witness. Gentlemen, the law demands no such monstrous absurdity. Convictions upon circumstantial evidence, are of every day occurrence; and we are fortunately at this time not to establish or test a new principle. The rules governing this subject are the results of the experience of ages; they have been found sound rules for the government of courts and juries hitherto; and it will be your duty, whatever result they may lead to, to be governed by them now. [Mr. Hepburn referred to and read 2. *Russell*, 665-6; 1. *Stark. Ev.* 477, 491, 514 &c.] We find it here said, (1. *Stark.* 479.) that "circumstantial evidence is capable, in its own nature, of producing the highest degree of moral certainty in its application;" and this, though strongly resisted by my opponents, is certainly true. The circumstances by which the guilty agent of a murder is to be detected, are generally composed of many and minute facts. They are collected from the mouths of many witnesses, and those witness living remote from each other. When the facts are so collected, they must all harmonize, and fit together as a well constructed piece of mechanism; one part of which being defective, the whole fabric is of no value. If the circumstances so proved, bear directly upon the question of the prisoner's guilt,—and if true, are totally inconsistent with his innocence, the conclusion to which they would lead, is as certain and free from difficulty, as human testimony is capable of producing. Are then the facts and circumstances proved in this case, when tested by experience, and judged of by the known conduct of men, incompatible with the prisoner's innocence? If they are, there is sufficient evidence to convince your judgment, and satisfy your conscience of his guilt; the law requires no more. If then the law be so, what shall be said in relation to the cases cited from the appendix to Phillips on Evidence? The principles contended for by these cases are certainly at variance with the authorities which you have just heard, and which are quite explicit, that there may be convictions in cases of presumptive or circumstantial evidence. The mischief and utter folly of such a conclusion has, I trust, already been clearly shown to you, both by authority and argument; and that the cases which go to support such conclusions, are entitled to no respect whatever, from courts or juries. Indeed, it is said, that the cases cited by Phillips have lately been discovered to be fictitious. They are principally translated from the German and Italian, with such additions as the author of the appendix thought necessary, and have been issued to the world as true and genuine cases, occurring in England.—The case of James Crow, alias Geddely, cited by Mr. Rees, from the appendix 19, furnishes evidence in itself sufficient to satisfy any mind, that such a case could never have occurred. The case states that Crow was mistaken for Geddely, and arrested for an offence committed by him, tried by the name of Geddely, convicted, and executed. Can it be possible that a man ever lived, who was so totally destitute, not only of friends but acquaintances, that he was unable to prove his name? In their own country, and in their own neighbourhood, could no witness be found to identify either Crow or Geddely, or prove the name of the former? Such a case is unworthy of belief, and may be taken as characteristic of the whole. Many of the other cases referred to, are founded upon the most gross and unheard of perjuries, and are cases of direct evidence, which should have no place in a theory of presumptive proof. Others of them, rest their claim for an insertion among this rare and wondrous collection, upon the fact, that the dead body of the person said to have been murdered, was not found at the time of conviction, without which, at this time, a conviction could in no case be obtained. But why dwell upon this subject? Courts and juries have long since set their seal upon them, and stamped them with the contempt they merit; the author himself, by omitting them in the later

editions of his works, has plainly declared to the world, that he is ashamed of them, and considered them as impairing the value of his otherwise excellent treatise. I repeat, then, gentlemen, that there is nothing in the fact of this being a case of circumstantial evidence, which should cause you to hesitate as to your verdict. If the evidence laid before you, on the part of the commonwealth, be sufficient to satisfy your minds and consciences of the prisoner's guilt, your verdict must declare it. I am aware that it is difficult to do so; that man speaks with reluctance, when by his voice a fellow being is consigned to an ignominious death. But remember, that the responsibility of an oath is upon you. You are pledged in heaven and on earth, to say the truth according to the evidence. That truth must be carefully and assiduously sought for, and when found, as fearlessly declared. The first question suggested by the facts is, was Rebecca Getter murdered?

On the evening of the 27th of February, we find her in perfect health, at the house of Peter Wagener, and at about the usual bed-time of the family, she stepped out, intending to go to Adam Wagener's, a neighbour, residing a few rods distant. She went out alone, and certainly intended to be absent but a short time; as it was late, she had made no change in her dress, and had only thrown a handkerchief over her head; she had also made preparation to remove to her own dwelling, and to commence house-keeping early on the following morning. Almost immediately on opening the door of Peter Wagener's house, she is met by a man, (and, for the purposes of the present argument, no matter who,) and directly upon going out, entered into conversation with him. This conversation is *heard* by four witnesses, who have testified to the fact before you; and the person who thus accosted her, was *seen* by Daniel and David Wagener. These witnesses cannot all be mistaken. The rustling of the winds, or the trampling of the domestic animals, as contended for by the prisoner's counsel, could not have deceived so many; and if their ears were at fault, yet their eye-sight may be trusted;—and two of them have sworn to you, that they saw the man leave Peter Wagener's in her company. This evidence is further corroborated by the testimony of Regina Wagener, and Sarah Zearfass, who testify that they heard some person (the latter witness thinks it was a male voice) in conversation with her at the door of Adam Wagener's house; and heard him go round the house to the lane leading from the barn yard to the road. Without doubt there was some person in her company when she left Wagener's house, and where she was last seen alive. Where did that person leave her? If she fell in an epileptic fit, as it is alleged, why did not that person inform her friends of her situation? Can it be believed, that any human being could have left a dying female in so wretched a condition? It cannot: the man who accompanied her, and the man who left her, was her murderer. And who was her associate upon that fatal night? the prisoner has not shown you; the commonwealth, we apprehend, has. After leaving Adam Wagener's, she is seen no more until her dead body is found, distant about 100 perches from the house, and in a direction opposite to Peter Wagener's. It was found in a field immediately along side of the road, and concealed in part behind a stone fence adjoining the road, and within a few feet of it. Why she was within that field, and in this situation, if she went there alone, it is difficult to conceive, and the counsel for the prisoner have been able to furnish you with no plausible pretext. On the other hand, the bars leading into the field being down, show that they went there after deliberation; and her situation proves, that she was decoyed there by another, in order to perpetrate this horrid deed. The appearances about the body, gave clear and unequivocal evidence, that her death was not in the ordinary course of nature, but produced by the hand of violence. When found, her clothes had been most carefully adjusted, and her limbs as cautiously composed; one hand was placed upon her breast, and the other extended by her side, as if some anxious friend had, with reverence and affection, performed the last office to the body. That it was so disposed by some one, and that after death, there can be no doubt; for whether she died by the hand of an assassin, or by violent disease, the body would have presented no such decorous appearance. In such cases, we not only look for the straining eye-ball and a lived countenance, proved to have existed upon this occasion, but a greatly disordered frame, caused by the severity of the death struggle, as well as rigidity of muscle and a clenched fist, as though "she had pulled and tugged for life." The appearances of her comb and hair, are also entitled to your notice; and shew that her death could not have been the effect of accident, or disease. The hair was much disordered, and the fragments of her comb so entangled in it, that they were not all discovered until removed by Dr. Gross, in the course of his *post mortem* examination. A lock of her hair had also been cut from her forehead, which Elizabeth Wagener says, was not the case when she left the house on Wednesday evening. Why it was taken, I know not; but the fact that it was gone, is conclusive that the hand of some one was busy about her person, at or near the time of her decease. The very many pieces into which the comb was broken, could not have been effected by a fall, such as produced by a fit. It must have been the effect of repeated violence; and probably was produced by the motion of the head when her throat was heavily pressed by the hand of her murderer, and in the vain effort to become disengaged. The appearance of the body itself, however, gives still more conclusive evidence, that her death was produced by manual strangulation, as charged in the indictment. Six respectable witnesses have been examined before you, as to the wounds upon her throat, and they all unhesitatingly testify to distinct marks of violence appearing there. They tell you of a wound, such as would be produced by the



thumb-nail of a man upon the right side of her throat, which penetrated the skin; also, of an abrasion of the skin over the windpipe, and upon the chin; and of marks, such as would remain after the heavy pressure of the fingers, upon the left side of the neck. They vary slightly in the description of these wounds; but, in the material fact, that plain, unequivocal marks of violence were there, there is no discrepancy between them. The prisoner's counsel have dwelt at much length upon this slight variance, and endeavoured to invalidate their testimony. But, gentlemen, it has been well remarked, that it is characteristic of human evidence, that you may obtain from it substantial truth, through circumstantial variance; and those witnesses who agree in every minute particular, are more to be suspected of design and concert, than they who testify in the manner those now under consideration have done. They are men whose characters are above suspicion, and they are uncontradicted by any testimony on the part of the defence. They tell you, with one voice, that there were marks of violence upon the body of Rebecca Getter, such only as could be produced by the hand of a man;—can you then, gentlemen, have any hesitation in regard to it? can any one doubt as to the manner of her death? and, independently altogether of the medical evidence, are you not prepared to say, upon your oaths, that her death was effected by manual strangulation? Dr. Gwinner, upon whose testimony the arguments of the defendant's counsel have been principally founded in relation to this matter, would give us no opinion upon the throat, exclusive of the marks of violence; he says he would have doubts as to the cause of her death, but that he knows of no disease, to which the human system is subject, which could have produced such appearances on the neck. This doubt of the Doctor being an hypothesis in this case, can produce no doubt upon your minds, as in every particular, we believe the testimony of Drs. Gross and Gwinner, are consistent with each other. The testimony of Dr. Gross, then, puts at rest all question or difficulty, as to the manner of her death. After describing to you, at much length, the appearance of the body, both before and after dissection, he describes minutely the works of violence upon the throat,—upon the eye-ball,—and upon the shoulder. He mentions to you the straining eye-ball; the flushed and livid countenance, so unusual in death; the full and gorged blood-vessels of the chest and face; and the internal appearances, from which his own unhesitating opinion was formed; and gives you, as the result of his investigation, that she unquestionably died by manual strangulation, and that he has no doubt whatever upon the subject. I need scarcely remind you, that Dr. Gross is a learned and able physician; and the opinion he has given you, has not been hastily formed, but is the result of much labour and great consideration. He tells you, he has since made frequent experiments, which he has described to you, and has also examined the body of a person who died by strangulation; and that the whole tends fully to confirm and establish his opinion.—Gentlemen, do you believe the evidence adduced to you upon this subject? If you do, and it is wholly without contradiction, then must you believe that Rebecca Getter came to her death by the hands of an assassin. If you do not so believe the evidence of the commonwealth, it has failed to produce its proper effect upon your minds, and “ye would not believe, though one arose from the dead.”

Who, then, was the guilty agent of her death, is the next question for our consideration?

Upon the finding of her dead body with such unequivocal marks of violence upon it, the first question presented to the mind is, who was her enemy? Who had evinced sufficient motive for the commission of this atrocious act? In whom had her conduct excited such a spirit of revenge, that nothing but her blood could allay it? Her conduct, gentlemen, could have excited no such deadly hostility; for she was mild and amiable in her deportment, kind and gentle in all her intercourse with the world. Her greatest fault and her greatest misfortune was in her connection with the prisoner at the bar. Their intercourse was commenced in crime, and has, I apprehend, terminated in blood. There was no other human being who bore her enmity; (for in the absence of all proof to the contrary, I am justified in saying so,) and the mind of every man, with one consent, to the question, who had evinced sufficient motive for this act? responds to Charles Getter, “thou art the man!”—Let us inquire if the evidence will clearly support this conclusion. It is in evidence that he had been for two years previous to this melancholy occurrence, accustomed to visit her, and in habits of familiar intercourse with her. The consequence of this was not matrimony, as she probably expected, but that she was obliged to have him brought in on process. The constable took him to the house of Peter Wagener, where she then resided, and as is most generally the case, he here demonstrates that, possession satisfied, he now loathes the object of his former affections. His conduct and deportment there, as described by the several witnesses, gives clear evidence of a most anxious and troubled mind—and he immediately declares to the family, the cause of his disquietude. He says “that he is promised to another, and that Molly Hummer has now his entire and undivided affection;” and he attests the truth of this declaration by his sobs and tears. But the goal had its terrors for him then, and rather than become the tenant of its solitary walls, he hesitatingly determined to forego the pleasure he had anticipated with his last love, to perform the obligation under which he rested to the first. On the following morning he accompanied Rebecca to the Justice, and there again after a long delay, and being urged by the Justice to despatch, he gave his reluctant consent to the marriage; and well would it have been for him, if that consent had been for ever with-

held. It was yielded, however, and with falsehood on his lips, before heaven and earth, he promises that which he never designed to observe—he engages to “love, to cherish, and protect her,” who probably, at the very moment of his pledge, was the object of his greatest hatred. Where has he shown her the kindness or the affection of a husband? When and in what manner has he contributed to her comfort? And where was her protector upon that fatal night, when at her utmost need, the power and might of his arm could have yielded her such efficient aid? Ah! gentlemen, there is reason, to believe, that his arm was then around her, and that his hand was upon her; but it was the embrace of the murderer and the death grip of the assassin, who never left his hold until the last pulse of life had quivered into death, and the mother and her unborn babe had slept the “sleep from which there is no awaking.”—Oh what a lesson may this world learn from such a scene as this. But I forbear—let our youth beware how they commence with crime, for it is a bottomless pit, and the end thereof they know not. The evidence proceeds—He returned with her from the Justice to the house of Peter Wagener, but to remain there for a very short time. He then proceeded to John Brader’s, and here he immediately discloses his true sentiments in regard to the wedding and his wife. He did not immediately proceed into the house, but remained upon the porch, giving indications of the most intense sorrow, as to the situation in which he was then placed. Here, on the evening of his wedding day, he declares that he will never live with his wife—and why? “He pities Molly Hummer so,” and attests to the truth of his declaration with his tears. What a storm of passions must have been raging in his breast; how ungovernable his hatred to his wife, when it could draw tears from such a man as this. He who could sit during the harrowing details of this trial, with a cheek that blanched not, an eye that never filled, and a form that never drooped, could yet pour forth a flood of tears from hatred to his wife, and pity to Molly Hummer. He had no pity for his wife. He had cast her off as a thing he loathed and hated; and had resolved to place all the affections of his nature upon Molly Hummer. Let not the counsel tell you, gentlemen, that this was the effect of teasing, and the whole but a joke—tears from such a man speak in a language not to be mistaken—it is the language of the heart, and upon this occasion gives an earnestness and sincerity to his words, which cannot deceive, and which may not be disregarded. He was unwilling that the fact of his marriage should be communicated to Molly Hummer by any other than himself. He doubtless intended to prevail upon her to form no determination inimical to himself, but to receive his addresses and attentions as heretofore.—Strange conduct for the husband of another! But such the case presents. Indeed, his love for this woman is predominant, and absorbs all other feeling, except that which in this case is the kindred feeling, and the consequence of it, hatred towards his wife. She had promised to be his; and after his marriage, he had declared that “she should be his, if he had to walk on pins to get her, and let it cost what it would.” Time nor circumstances should not separate them—he would have her, if in many years. In the absence of all other consolation, and in the fulness of his folly, he calls upon Juliana Leitz, the supposed fortune teller, with the vain expectation, that even from such a one as her, he could receive something to encourage his hopes, or to allay his fears. And he might now rejoice, if he had followed the sybil’s counsel: for even she had wit enough to know, and sincerity enough to declare, that the conduct he was then pursuing, could only bring down sorrow and distress upon his guilty head. To be told by one in whose foresight he perhaps placed confidence, that he must live with his wife, and that Molly Hummer could not be his, was more than his fortitude could bear; and here again, we see this stern and stubborn man melted into tears. It is clear, gentlemen, from the whole evidence, that his love for this woman was strong and irresistible. We find him exceedingly fond of her company; he rides with her; he visits her whenever he is able, and when he apprehends that he will lose her, he is melted into tears; and even a short absence from the neighbourhood produces the same result.—His love had become too strong and powerful for his resistance, and he coolly and determinately resolved that it should be gratified at any and at every cost—he had counted the cost, and had resolved to meet it, be the price what it would. But, gentlemen, he was the husband of another—his wife was the only obstacle in the way to what he supposed to be the place of his unalloyed happiness. His resolution being unalterably fixed, the magnitude of the obstacle would in no wise tend to diminish his unhallowed affection, but on the contrary would contribute to render his desire the more ungovernable, and the more intense; and in the same proportion that he desired to have the one, did he desire to get rid of the other; and when he determined to possess Molly Hummer, he as certainly and at the same time determined to free himself of his wife. His determination being formed upon the side of crime, he became at once the slave and tool of his own passions. Hatred towards his wife was the necessary consequence, and that hatred grew with the growth of his criminal affections. She was the obstacle in the way of his promised happiness—she stood like a dark mountain across the pathway of his anticipated paradise, and he resolved to scale it, though the gibbet frowned upon its brow, and perdition yawned beyond. Sentiments such as he bore to his wife, could not long be concealed from his friends and acquaintances—“out of the fulness of the heart, the mouth speaketh.” And very soon the true state of his feeling was declared to the witnesses who have been examined before you.—By one we are informed, that he was always saying he would not live with her.—Another describes to us his indecent conduct to his wife at Walter’s.—To another he says it is against his very nature to live with her.



And the gaol too had now lost its terrors, as to the same witnesses, he declares he would rather go to gaol five or ten years, than live with his wife. To another witness he also declares he would go free of his wife; and on being asked how, he merely responded without further explanation, he "would go free."—But we are not long left to conjecture as to the means he would adopt. Threats speedily follow this open declaration.—To Joseph Hackman he said, he "would get clear of her, it might go just as it would."—He would be deterred by no fear of consequences, it might go as it would.—To John Kindt he said he "would be rid of her in three weeks, it might cost him what it would."—And to Eliza and John Brader, he uses much the same language—he would be rid of her before three weeks were around; and again that he would be rid of her in one week.—Here, again, gentlemen, he is counting the cost, and again deliberately determines that the surpassing magnitude of the hazard shall not deter him. But how was he to get clear of her? When asked the question directly by John Brader, he refuses to answer. If his purpose was lawful and right, why not disclose it? Again he himself furnishes the answer—to Eliza Brader he says, he "would be rid of her—he wished her dead;" and to John Brader he "wished that his wife was dead." Here then is the sum of the matter. This is the key which opens to us the meaning of his previous mysterious threats and assertions, and points us to her death, as the object nearest to his heart, and first in his thoughts and wishes. What did he mean then, when he said he would be rid of her before three weeks; and again, before one week; and within the allotted time she is found a lifeless and murdered corpse. Does not the fact of her death demonstrate his intentions; he wishes her dead, and she is dead. He would be rid of her within a given time, and within that time, by the hand of violence, she ceases to be numbered with the living. Does this language bear its accustomed meaning? Shall it receive its appropriate interpretation? If it does, it cannot be mistaken, and may not be disregarded; but, "out of his own mouth you must condemn him." Thus, gentlemen have we shown you a motive in the prisoner for the commission of this offence, strong as love and hatred could produce: we have also shown you from his own declaration, an unfaltering determination to be rid of his wife at any and at every cost, and that her death was the end he most earnestly desired. But the learned counsel tell us, that he would have been a fool to have made such declarations, if he had intended to have been guilty of the crime. Are we yet to learn, gentlemen, that guilt and folly go hand in hand? We have observed but to little purpose, if we have not long since acquired that lesson.—The wisest of our species when he becomes guilty, becomes a fool upon the subject of his guilt; and often the very means taken for his concealment, effects his discovery. These declarations may be the offspring of folly—but guilt and folly are inseparable. Here the scene changes.—We next find the prisoner in company with his wife at Walter's, and there he declares he will keep house with her. They were alone together some time, and very shortly after this, she commenced preparations for her house-keeping. They again met at Bunstein's on the Saturday previous to the murder, and they had a long conversation together, but what the purport of it was, we know not, except so far as he disclosed it to John Lawall, to whom he told that he had there agreed to move with her on the following week. His conduct and conversation, there had certainly the appearance of being friendly towards her, as on the Monday morning following, she proceeded to Easton to make purchases, preparatory to her house-keeping, and was diligent in her preparations to move on the following Thursday. But this conduct was without sincerity, as upon the following morning we find him in conversation with Thomas Hope, when he expressed the same sentiments which he had always held since his marriage: that he was anxious to be rid of her, and would not keep house with her. But at Brader's, upon the same day, he gives the most satisfactory evidence that his wife was still the object of his hatred, and that he was still determined to be rid of her. His distress upon that occasion was unusual. He paced the room like one bewildered—he said he had no rest, "it troubled him so." What precisely he alluded to, we are not told; but in the midst of this uneasiness he remarks, "he would not lay any thing in his wife's way, but he would not live with her." Gentlemen, why this remark? Was he meditating mischief towards her? Was the time which he had appointed to be rid of her drawing to a close, and was his resolution faltering? Had he not engaged to meet her on the evening previous to the murder, and did the thoughts of what might then occur, cause him to look like a bewildered man, and to declare that it troubled him to such a degree that he had no rest? His wife, however, woman-like, during all this time, confiding in his promises, was exulting in the prospect of a happy home, and of the affections of a husband regained. In a word, she trusted him, believed him, and he could have led her whithersoever he would. But his conduct towards her was false and deceitful, and beneath the cloak of affection, he covered his foul and unholy purpose. Before leaving this part of the case, it is to be observed that there are two periods at which his agitation is the greatest—the first, upon his wedding-day—the other, upon the Sunday previous to the murder. Why he was so unusually disturbed upon the latter day, it is difficult to conceive, unless, as it may be connected with the offence with which he now stands charged.—From all these strong motives which have been brought home to the prisoner, from his threats of violence against her, when we find her decoyed from her home by a pretended friend, and in the absence of all proof tending to a different conclusion, would not Charles Getter be more than suspected as her murderer? Are not your minds prepared to expect just such evidence as follows in this case? Upon the evening of the murder we

find the prisoner at Clauss's. He gave no intimation of his intended absence; and although he knew that his associates were going upon the same road which in his examination he said he had passed over; yet he did not accompany them, nor did he mention to them that he was going that way. On the contrary, he was seen to start in a direction opposite to this road, or to Heil's or Wagener's. When the fact of his being seen was mentioned to him in goal, he replied that no one could say so, for he had looked, and there was no one on the porch.—Why look? if his journey was for any honest purpose, it would have been indifferent to him whether seen or not. His starting then was suspicious. He left Clauss's at a quarter past six o'clock, and arrived at Heil's, where he staid all night, probably at near nine o'clock. The distance travelled is four miles and a quarter or four miles and a half. He tells the Justice that he went the nearest road—saw nobody—stopped no where, and went straight on. He must then have been two hours and a half, not less certainly than two hours and a quarter in travelling this distance. Was he so long upon the road? He himself best answers the question. On the following morning he passed over the same ground in less than one hour. The prisoner does not and cannot account for this time. He was accustomed to stop at Hackman's, but was not there upon this evening, neither is he seen upon that road. If he went by Wagener's to Heil's, the distance is five miles and three perches, and he had ample time to go that distance, and do the deed with which he is now charged. The Commonwealth, then, has accounted for the manner in which he has spent his time, when he has been unable to do so. We also show then, he was seen at Peter Wagener's gate, in company with the deceased, immediately before the murder. David Wagener, the witness who speaks upon this subject, says, that after Rebecca had gone out of the door, he heard her in conversation with some one; which fact has also been proved by a number of other witnesses—that he got up and looked out of the window, and there he saw Charles Getter at the gate with Peggy, and he turned round and said to his mother, “there is Charles Getter out with Peg”—that he heard him say, “come,” and they went off together. Gentlemen, if this witness is believed, (and I have rarely seen a witness in court, who from his appearance and deportment, was more entitled to belief,) then there is an end of all further question in this cause.—But he is attempted to be impeached, in consequence of some slight variance in his evidence as given before the committing magistrate, and now here in court. The variance is but slight, and with his explanation, merely verbal: the effect only of inadvertence.—But we are told by these witnesses that he said to his mother, that “Charles stands out there with Peg;” and that one of them, Daniel, went out and saw the person accompany her along the road. Now, why this remark, unless Getter was really there? what inducement had he then for saying so? He suspected him for no improper design, and did not then suppose that the remark or the fact would be ever called in question. But he is consistent with himself before the inquest, before the magistrate, and in court. It is said in 1. *Starkie on Evidence*, 467. that direct testimony may be strengthened or weakened by circumstances, to an indefinite extent—and this testimony of David Wagener, is direct as to the fact of Getter's being in company with the deceased on that night; but circumstantial in its bearing upon the murder. And let us examine how far it is corroborated by the circumstances in evidence. The moment she stepped out of Peter Wagener's door, she is met by some person, with whom she had conversation. If this person had been a stranger, or one of whom she was afraid, what would have been the natural course for her, or for any other woman to have pursued? Would she not have retreated to the house? But she did not.—It was a person then in whom she had confidence—and the prisoner, as has been shown, had recently ingratiated himself into her favour. It is in evidence, also, that the prisoner had said he would not go into Wagener's. What other acquaintance, then, had she, who would not go into the house: who would lay concealed at the door, and with whom she was willing to trust herself alone?—Again, as they moved off, he said to her, “come.”—At whose bidding but her husband's would she have so readily followed? At Adam Wagener's, he is again heard, and there too she conceals him, and doubtless at his own request. If it had been a common acquaintance, he would have gone in. If any one of whom she had fears, she would here have disclosed them. But she shows no such emotion. She is only in haste to be gone—in haste to fly to her pretended friend, but really her deadly foe.—One of the family accompanies her to the door—and here again, for the purpose still of concealment, she does not follow in the direction he had gone, but goes round to meet him at the entrance of the lane.—And it is also to be remarked, that this person was acquainted with the ground, for no other could conveniently have taken the direction he went. Do not these circumstances corroborate the testimony of David Wagener? Do they not demonstrate that it was a man in whom she confided, but who was really her worst enemy? The time—their conduct together—and his knowledge of localities, with the other circumstances—point, with an unerring aim, to Charles Getter, as the only man who could have been her associate upon that fatal night. We have next the testimony of John C. Mixsell upon this subject, who says that he met Getter that night crossing the Bethlehem road. His testimony has been strongly impeached, and I cannot pretend to reconcile his different statements; but it is not for me to decide upon the credit to which evidence is entitled, though perhaps I ought to say, that it is not safe to take away the life of a fellow being upon such evidence as this—and it would be better to throw it out of the case, and determine as if it had not been heard. In proceeding with the inquiry, how far the prisoner is connected



with the immediate circumstances of the murder, we find that he is connected in point of time—that he was in company with her when she was last seen alive. When did they part? Where did he leave her? Her dead body furnishes the only answer—there was no blood to learn its trace, nor no weapon attending this murder. But it was evidently done by a strong man, as appears by all its circumstances, and committed by a supposed friend; and the prisoner well answers to both descriptions. Again, they had agreed to move on Thursday, the day after the murder. She had made preparations for it—he had not; but was found at work at Clauss's quarry on the day the moving was to take place. Add to these facts his declarations, already remarked upon, that he would be rid of her, at about the time her death took place, and the strange declaration to John Brader, when talking to him upon the prospect of being a father—he says to him most emphatically and with great earnestness, "John, I tell you, I will not be daddy;" what did he mean by this assertion?—The counsel say he meant he was going to Jersey—but would that prevent it? "If he had taken the wings of the morning and flown to the uttermost parts of the earth," how could it effect such an event. Nothing but the death of his wife could prevent it; and as he had wished her dead, we can readily believe that this was his meaning. There can then be no difficulty in believing the evidence which tells us, that he was seen last in her company when alive, or in designating the person by whom the murder was committed. But the prisoner's counsel have argued with great earnestness, that from the time at which he was seen at Wagener's, and the time of his arrival at Heil's, it is impossible that he can be guilty. Witnesses rarely speak with certainty as to time, and indeed, a man can but seldom tell the time of his arrival or departure, within 10 or fifteen minutes from any particular point. David Wagener says, he saw the prisoner about half past eight o'clock—and Heil states that he arrived at his house at about thirty-five or forty minutes past eight, but does not speak with certainty; and the prisoner himself says it was near nine when he arrived there. It is in evidence, that Wagener's clock was twenty-three minutes faster than Heil's, which would give not less than twenty-eight minutes—and if it was ten minutes before nine when he arrived, not more than forty-three minutes for his stay at Adam Wagener's, to commit the murder and travel a distance of one mile and three quarters. The latter time would be more than sufficient, and the former (twenty-eight minutes,) if his stay was less than fifteen minutes at Adam Wagener's, would also probably be enough. He is a young and active man, and if he had committed such an offence as this, and was in search of witnesses to prove his absence from the scene, the distance would be speedily passed.—The prize he ran for, was his life, and he certainly lacked no motive for accelerated movement. The time which elapsed between his departure from Clauss's and his arrival at Heil's, was two hours and twenty-five or thirty minutes—which was more than sufficient for the commission of all that the prisoner is charged with; and a little uncertainty in the intermediate time cannot shake your belief in all the other strong and irresistible evidence in the cause. If you believe he was seen at Peter Wagener's, then there was time enough for his arrival at Heil's, and this, the only plausible difficulty in the case, is put at rest. But why was he at Heil's that night? He had travelled four and a half miles, as he told Benjamin Brader, to get his watch, when in fact his watch was not there. He also told contradictory stories about it to the Justice; and Mr. Heil tells us, he never before staid there all night, unless when he worked for him. There is mystery in his being there, which is not explained by the prisoner. His conduct too, at the time of his arrest, is not easily reconcilable with his innocence. When told that he was charged with the murder of his wife, he merely asked, "is she dead?" and said no more. Common curiosity would have prompted him to have inquired into the particulars—and his silence is perhaps best accounted for, on the supposition that he knew more of the facts than any other individual living.

Gentlemen, I have gone through with the evidence. Do you believe it?—And can you accede to the conclusions which I have drawn from it? If you can, then is Charles Getter guilty of one of the most atrocious murders ever devised by the wickedness of man. Under the pretext of returning love—under the show of kindness and affection, he decoys his victim into his power, and probably when her confidence was at the highest, he perpetrates his hellish designs. If he has done it his life is a just forfeit to the violated laws, both of God and of his country; and the retributive justice of the law must have its unimpeded course. Be not deceived, gentlemen, by any mistaken ideas of mercy, but exercise that more expanded mercy which embraces the community, and which looks not upon the prisoner at the bar. Respect for your own safety, for the safety of your own families, and of the public, requires, that an offence such as this, should receive its merited punishment; and you will long hesitate before you will again set at large this man, for further depredations upon society. But, gentlemen, respect for your own duty, respect for your oaths, recorded where you shall one day meet them in judgment, requires that you shall say the truth according to your evidence, even though the prisoner's life shall be the forfeit.

## CHARGE OF THE HON. GARRICK MALLERY.

**GENTLEMEN OF THE JURY.**—We are now approaching the close of a very laborious and serious investigation, and it was my design to enter fully into the testimony and bring it into view, in connection with the points raised on the trial, but the late hour of the evening renders it difficult to do so; and the great minuteness with which the evidence has been referred to, and the able manner in which it has been discussed by the counsel on both sides, renders it less necessary. All the evidence, with the different statements made by the witnesses, the contradictions and variations in the testimony, must be fresh in your recollection. Where a witness has given different accounts of the same transaction in its material parts, and especially if he has differed materially when under oath, no reliance can be placed upon his testimony. If the variation be slight and of an immaterial character, it might arise from inadvertence, and would affect the credit of the witness less; to what extent, you will judge in each particular case.

In this case, the manner in which the murder is alledged to have been committed, and the evidence in the cause, indicates that if a murder was committed, it was wilful, premeditated, and with malice aforethought; and indeed, it is admitted by the counsel on both sides, that if the defendant is guilty at all, he is guilty of murder in the first degree. It is, however, a question for you to decide, and in a cause of such moment, and involving such consequences, you should examine the evidence with great care and caution, and you should be fully satisfied of the prisoner's guilt, and that beyond a reasonable doubt, before you return a verdict of guilty.

Much has been said and read to you from the books, concerning the uncertainty of circumstantial evidence, and indeed, of all human testimony. It is true that erroneous conclusions may be drawn from circumstances. It is also true that witnesses may be deceived as to the impressions made upon their senses—their memories may fail—their prejudices and passions may operate—and they may commit perjury. But, because it is possible to err or mistake, we are not to throw aside all human testimony, and become sceptics indeed, and believe nothing. This cause and all others that come before a jury, must be determined by human testimony; we can neither look for nor expect any other. And in this case as well as others, in the absence of *positive*, we must decide upon *presumptive* evidence. In order to convict the prisoner upon circumstantial evidence, the presumptions drawn from it should be tested by experience; they should be violent, and such as clearly involve his guilt.

With these brief and general directions, you will proceed to the examination of the facts.

Your first inquiry should be, whether a murder has been committed? If the proof does not satisfy you that the deceased *was killed*, there is an end of this prosecution.—The evidence bearing upon this part of the case, is that which describes the place where the body of the deceased was found—in the field behind the fence—the situation of the body—upon the back—one hand upon the body and the other by the side, and the clothes composed; the comb under the head and broken, as has been exhibited to you. Would such be the situation and attitude of the clothes and body left by death occasioned by apoplexy or violent disease? Or do they indicate the hand of violence that committed the deed in the field, to which the deceased had been conducted, and then adjusted the clothes and limbs after death? If they are consistent with a death by disease, which unexpectedly assailed and overcame the deceased while alone, no inference should be drawn from them bearing upon this part of the cause.

The residue of the evidence relied upon to establish a *homicide*, will be found in the facts detailed by Dr. Gross and five other witnesses, who describe the appearance of the face and neck, the abrasion or rubbing off of the skin upon the throat and the marks upon the side of the neck. One in particular, cut through the inner or true skin, its curved shape, its resemblance to a mark made by the thumb-nail; their dark and livid colour. Some of them speak of marks upon the other side of the neck, and under the chin. They vary in the description of the marks which they saw upon the neck, but all agree that there were evident marks of external violence. Dr. Gross has detailed to you the appearance exhibited upon the *post mortem* examination, from all of which, including the external marks upon the neck, he gives it as his opinion that the deceased came to her death by manual strangulation.

Dr. Gwinner has been examined, on the part of the prisoner, and he states, that, with the exception of the violence upon the neck, the appearance of the body, as described by Dr. Gross, is very similar to that exhibited in cases of death by apoplexy, which he has seen, and, from the description given, he would not speak positively as to the cause of her death. As to the external marks described, he gave no opinion. The opinion of Dr. Gross is founded on the *whole* appearance of the body—that of Dr. Gwinner on the appearances described, exclusive of the marks on the neck. It does not appear to me that they differ materially in opinion: their conclusions are different, for they are drawn from a different state of facts. Dr. Gwinner also states, that, in cases of death by violent disease, there may be livid spots *under* the skin; no one tells us of any disease that will produce the marks described by the witnesses: an abrasion of the skin, and a penetration through the skin of the character stated.

If, from the evidence on this part of the case, you are fully satisfied that the deceased came to her death by the hand of violence, you will, in the next place, enquire, whether



Charles Getter, the prisoner at the bar, inflicted those wounds upon the neck, and caused her death. As crimes of this character are not usually, or often, committed without some motive or inducement, your attention should be directed to the evidence, to ascertain if any sufficient motive is found operating upon the prisoner. If a murder was committed, it is evident that gain was not the inducement. She had nothing upon her to excite it, and her ear and finger-rings, and all that she had on when she left Peter Wagener's, in the evening, were found upon the body after death.

From a general view of the evidence, on this part of the case, it appears that the deceased had charged upon the prisoner that he was the father of the child, with which she was pregnant: that he was arrested (he was at Peter Wagener's, where she then lived) in tears; he declared his attachment to another person—he went with the constable before the magistrate who had issued the warrant—after some hesitation they were married. He returned with her to Wagener's, took dinner, and left her; and the same afternoon, and repeatedly afterwards, declared he never would live with his wife; that he would have the other, to whom he was engaged, if he had to walk on pins, or go to prison for five or ten years, that he would get rid of his wife, let it cost what it would, and he wished her dead. These declarations of the prisoner are given in evidence, to show the state of his feelings towards his wife, and connect him with her death, so far as the motive is concerned. Had the prisoner been living with his wife on friendly and affectionate terms—had she been the object of his attachment—a strong presumption would arise in favour of his innocence. If she was an object of hatred—if she stood between him and the enjoyment of another, on whom his affections were placed—a presumption arises against him.—You will ascertain from the evidence what were the feelings of the prisoner towards the deceased, and judge of their force and tendency.

In the next place, you will enquire whether the prisoner was at the place where the murder is alleged to have been committed, at such time, and under such circumstances, as to connect him further with the commission of the crime.

The time alleged, is the night of the 27th of February, 1833. David Wagener testifies, that the deceased, on that night, about half-past eight o'clock, went out of his father's house, and that, as soon as she was out of the door, she was heard to talk with some person.—This talking was heard by three others of the same family. It is stated that all the members of that family, that were at home on that evening, were in the house at the time. David Wagener then went to the window and looked out, and says he saw Charles Getter there, with his wife, at the gate; that the moon shone bright. He describes his situation and his clothes; and one of them (and he thinks it was the prisoner) said "Come," and hesitated at the time; that Charles Getter was then with his wife, and they went out of the gate together. David went to the door, and saw some person walking with the deceased towards Adam Wagener's: the deceased then went into Adam Wagener's, to give some directions, preparatory to her removing, on the following day; and, before she went into the house, she was heard talking with some person. She stayed here a short time—did not sit down—and Mrs. Zearfass went out with her to the gate, and she is seen no more, until her body is found the next day, as described to you. Five or six witnesses testify that they heard the talking.—Daniel Wagener, that he saw *one* walking with her—and David Wagener, that he saw Charles Getter with her, when she went out of the gate. The credit of these witnesses, as well as that of all the others, their means of knowledge—the situation in which they were—any thing which might create error or uncertainty in their evidence, should be well examined by you; for whether the prisoner was with her at that time and place, is a very important enquiry in this cause.

The testimony shows, that the prisoner left Clauss's after supper that evening, at a quarter past six o'clock, or thereabouts. In referring to the times and distances, generally, I shall not pretend to fix them, but leave that to you, from the whole evidence. He went towards the barn, neither towards Heil's, nor Wagener's; that was the last that was seen of him, until he came to Heil's: a little more than half-past eight o'clock, unless he was seen at Wagener's.

The prisoner has stated that he went from Clauss's, by the way of Hackman's, to Heil's: that he stopped nowhere, and saw nobody on the road—that he got to Heil's about half-past eight o'clock, or a little nearer nine o'clock. In his statements he has been uniform and consistent throughout; with the slight variation concerning the watch, which he corrected in his second interview with the examining magistrate. And it appears to me, that nothing could safely be drawn from that against the prisoner, considering his situation, the accusation against him, and his examination without counsel, before the magistrate. The prisoner did not fly, or attempt to escape from the officer who arrested him; but quietly submitted, and went with him.

Philip Heil and Caroline Deemer state, that the prisoner came to Heil's about half-past eight o'clock in the evening; that they observed nothing unusual in his appearance; did not notice that he was out of breath, or in a perspiration. Mr. Heil says, he wound his clock at half-past eight o'clock: that he had set down by the stove a few minutes—he thinks about five minutes—when Getter came in; that he stayed all night—slept with his son; that he called him and his son about six o'clock in the morning; that he set out to go to Clauss's.—And from the testimony of Clauss and others, he arrived there while they were at breakfast; the precise time is not fixed—said to be about seven o'clock, or after, in the morning—and nothing unusual was observed in his appearance at that time.

The counsel for the prisoner rely upon the insufficiency of the proof, on the part of the prosecution, and upon establishing an *alibi* from the testimony in the cause. You will, therefore, direct your attention particularly to this subject.

The distance from Clauss's to Heil's I take, from the evidence, to be about four and a half miles. From Clauss's, by way of Wagener's, to Heil's, by measurement, on the nearest course, is stated to be five miles and three perches. From the time at which Getter is said to have left Clauss's, to the time at which he arrived at Heil's, is not denied to be sufficient for him to have gone by the way of Wagener's—it being only half a mile and five perches further, by the way of Wagener's. But the difficulty presented, arises from the time at which the deceased left Peter Wagener's, as stated, at half-past eight o'clock, and was after that at Adam Wagener's—where she stayed, by the estimation of the witnesses, about fifteen minutes; was at the gate, with Mrs. Zearfass, two or three minutes. It is said to be fourteen perches from Peter Wagener's to Adam Wagener's, and eighty-five perches from Adam Wagener's to the place where the body was found; and from that place to Heil's is one mile and a half—wanting six perches. In order to ascertain the agreement of the clocks referred to, an examination was made, on the Wednesday of the next week after Getter had been arrested: the result of which was, as I understand the evidence, that the clock of Peter Wagener was twenty-three minutes faster than that of Heil. Taking this data, and allowing that the deceased was fifteen minutes at Adam Wagener's, as the witnesses state, and two minutes at the gate, as she went out, would be seventeen minutes; then, to the difference of the two clocks—to wit, twenty-three minutes—add the five minutes which Heil says it might have been over half-past eight o'clock, when he arrived, will make twenty-eight minutes; and from that deduct the seventeen minutes, will leave only eleven minutes of time to walk from Peter Wagener's to Adam Wagener's, and from thence to the place where the body was found, and commit the murder, and pass thence to Heil's, one mile and a half.

This calculation is founded upon the estimate of time, made by the witnesses themselves, and we have no means by which we can test its accuracy—we take it as given by them. If, in your opinion, this time is too short to admit of the prisoner's being with her at the time of her death, and at Heil's, at the time stated; or if it should raise a reasonable doubt in your mind, when taken in connexion with the other evidence in the cause, that doubt should operate in favour of an acquittal. It is your duty to reconcile the testimony, if you can; and with a view to this, you will consider how far witnesses can calculate, with certainty, the time, without reference to a time-piece; and what liability there is for them to err, on the one side or on the other.

You will take into consideration, in this part of the case, the testimony concerning Charles Getter being at Wagener's, with the deceased, on that night, and consider how far that evidence is affected by this calculation of time; or how that evidence will bear upon the accuracy of the calculation, as to the time. If Charles Getter was with her that night, for what purpose was he there? If he had become reconciled to her, and she was to remove the next day, and he had, as he admitted, agreed to assist her to move, if he should have notice, would it be natural for him to leave her that night? or without, at least, seeing her safe back to her home?

If the natural force and operation of all the testimony in the cause, without any harsh, or strained construction, brings your minds to the conclusion that the prisoner is guilty, and, under that decision, the mind rests easy and satisfied, your duty to yourselves, to your country, and to your God, require of you to return a verdict accordingly. But, if you have any reasonable doubts of his guilt, you should acquit. From the evidence, your verdict must be that of not guilty—or guilty of murder of the first degree.

The charge was concluded on Saturday evening about 9 o'clock—the jury retired—and in about one hour the court-bell rang—the court opened—the prisoner was brought up, and a verdict rendered—“*Guilty of Murder in the first degree.*” At the request of the prisoner's counsel, the jurors were polled, and respectively answered the interrogatory as propounded—“*Guilty of murder in the first degree.*”

Shortly after, Messrs. Porter and Rees stated to the Court that they would have a motion to submit on behalf of the prisoner; and the Court, at their request, adjourned until Monday morning, at 8 o'clock.

On Monday morning, Mr. Porter submitted the following reasons for a new trial:

*First*—That the jury have convicted the prisoner of murder in the first degree, on circumstantial evidence, when it was entirely possible for all the circumstances to be true, and yet the prisoner innocent of the Homicide.

*Second*—That the proof on the part of the prosecution was, that the person seen with the deceased at Peter Wagener's gate, and identified by the witness as Charles Getter, was so seen at half-past eight o'clock—That she went thence to Adam Wagener's, where she remained fifteen minutes, and thence was seen returning to the house of Peter Wagener. That the going from the one house to the other, and the time she was seen after leaving Adam Wagener's house, must have occupied from five to seven minutes more; and the proof was clear and distinct, that at the latest, the prisoner arrived at the house of Philip Heil at thirty-five minutes past eight o'clock; and it was impossible that he could have committed the homicide, and travelled the distance of



more than a mile and three quarters in the intervening time, if there was any, and not appeared hurried, warm, or out of breath.

*Third*—That in charging the jury, his Honour omitted to state the circumstances of his appearing at Heil's without any appearance of hurry or warmth.

*Fourth*—That improper publications, calculated to affect the prisoner's defence, were made in newspapers, printed in the borough of Easton, previous and during the progress of this trial.

September 2d, 1833.

J. M. PORTER, }  
EVAN REES, } Of Counsel with the Prisoner.

After submitting these reasons, *Mr. Porter* read from the *Easton Centinel* of the 8th day of March and 17th of May last, certain statements in relation to the homicide, calculated to create an unfavourable impression upon the public mind against the prisoner; all of which, he said, were improper, even if truly stated, and many of them were unfounded and not supported by any evidence in the cause. He also read accounts of the trial, published during its progress, in the *Easton Argus* and in the *Easton Centinel*, which were less objectionable, but still, in his opinion, improper. How far these publications had affected the prisoner, he would not say; but that they were calculated to prevent a fair and impartial trial, was manifest. In order to ascertain the facts, he prayed the Court to suspend the argument on these reasons, and to stay the sentence of the law until the next Oyer and Terminer.

*Mr. Hepburn*, in behalf of the Commonwealth, objected to this course, and desired that the argument might immediately proceed; assigning, concisely, his reasons for this request—That the prayer was unusual, and without precedent, nor could any sound or legal reason be assigned for the delay.

*The Court* decided that the reasons must now be disposed of; when the prisoner's counsel proceeded with the argument at some length.

On the first and second reasons, recapitulating the evidence. On the third, saying, that although the Court had mentioned the circumstance in some part of the charge, yet they had not, as the counsel conceived, mentioned it with sufficient clearness, in connection with the evidence which alleged that the prisoner was seen at Wagener's. As to the fourth, he contended that the publications were not only improper, but were actually false, and unsupported by the fact; grossly coloured, and calculated to jeopardize the prisoner's life, by creating an improper prejudice against him with the public, which could not fail to infuse itself into the mind of every member of the community; and that thus, no jury could, in fact, be obtained, which was entirely impartial. Although they themselves might not be aware of the true state of their feelings, having been operated upon, imperceptibly, by these prejudices pervading the community. He dwelt at considerable length, and with no little severity, on such a course of conduct by editors, who, in catering for the diseased appetite of the public, forgot that they were perhaps doing great injustice to a fellow-being, and even jeopardizing his life. He spoke of it as being illegal, and unquestionably indictable as a misdemeanour, calculated to poison the fountains of justice.

*The Court*, without hearing the Attorney General, in reply, overruled the motion, saying—That the facts had been fairly left to the jury; that the chain of circumstantial evidence was exceedingly strong, and that they could not well see to what other conclusion the jury could have come; that the circumstance stated in the third reason had been distinctly stated in some parts of the charge, and that it was evident there must have been some mistake as to the time; and that thus all the testimony was reconcilable. That, as to the publications in question, they were undoubtedly highly improper and illegal, and that publications of the kind ought to be discountenanced and punished. But that the granting a new trial, would not, in this case, remedy the evil which was already committed. That these publications might be a ground for postponing a cause, under proper circumstances; but not for granting a new trial, unless it appeared they had, in fact, operated upon some of the jurors who passed on the cause. That here, independent of these publications, would be the excitement growing out of the trial, and the different verbal accounts of it which go abroad; that were a new trial granted, there was not even a probability of the prisoner getting as fair and unbiassed a jury, as the one which passed upon his cause.

*The Court* then demanded of the prisoner, "If he had any thing to say why sentence of death should not be pronounced upon him?" To which he replied, "Nothing, except that he was not guilty."

His Honour, GARRICK MALLERY, then delivered the sentence of the law, as follows:

## SENTENCE.

*Charles Getter*: The jury, to whom the charge of murder, against you has been submitted, have, after a long and patient investigation, returned a verdict of guilty of murder in the first degree.—Your defence has been managed by able counsel, who have exerted in your behalf all the talents, eloquence, argument and intense feeling which the importance of the cause, and your perilous situation, could excite. They have urged, with great force and feeling, upon the consideration of the jury, every fact and



circumstance which tended to show your innocence, or even to show a reasonable or possible doubt of your guilt. Their want of success in obtaining a verdict in your favor, can only be attributed to the irresistible force and convincing nature of the testimony against you.

Upon a careful review of the trial, I am satisfied we have extended to you all the protection that the laws of the country will warrant, and the evidence against you was submitted to the jury leaving it to produce its effect upon their minds, by inferences which they themselves should draw. The situation in which the body of your wife was found, and the marks upon the neck, cannot be accounted for by any kind of death by disease—they are alone consistent with death by the hand of violence. The whole evidence in the cause points to you as the guilty agent of this atrocious deed. Your reluctance to marry her—your sorrow and tears, before, at, and after marriage—your repeated declarations concerning her; that you would not live with her; that you would be clear from her; that you wished she was dead; your avowed attachment to another; your determination to have that *other* at all hazard, and let it cost what it would, most clearly evinces your state of feeling towards your deceased wife, and show that you considered her as an obstacle to your attainment of the *other*, who was the avowed object of your wishes. This state of things, appears to me to raise a motive in your breast for the commission of this murder, as strong as any that can be conceived of, tending to the perpetration of any offence. Your apparent reconciliation to *her*, while to others you showed a continuation of unkind feelings towards her, is consistent with some meditated mischief against her, as affording the means of placing her, without suspicion, within your power. You was with her on that fatal night, without going into the house where she lived, and from which place she had purposed to remove on the following day, and you had agreed to assist her when she did move, you was the last person in her company on that night, and the next day her body was found with the marks of the murderer upon it.

If your reconciliation had been real, it would not be natural or according to experience that you should have left her *that night*, and at all events, without seeing her safe, in the delicate situation in which she then was, back to the place of her abode. These facts and circumstances are only consistent with your guilt. But the jury, who were the constitutional judges of the evidence, have passed upon them, as well as the evidence tending to prove an *alibi*.—There was a period during that night, between the time you left Clauss's and your arrival at Heil's, sufficient to pass over the ground and accomplish the murder. The evidence as to the time of the supposed murder and your arrival at Heil's, has been found by the jury not to raise even a doubt as to your being at Wagoner's, when opposed to the other evidence in the cause. Indeed no great time would be required for a murderer to go one and a half miles in order to furnish evidence to save his life.—It is unnecessary to enlarge upon the subject. It is enough that the evidence proves a murder committed. A state of feeling and motive operating upon you, all powerful in impelling to the deed; that you was in a situation to commit the crime; that you was with the deceased a few moments before her death, *and under such circumstances* as are irreconcilable with your innocence.

You must by this time feel the awful situation in which you stand; the period of your mortal existence is short—your life has been forfeited to the violated laws of your country,—by your own guilty, cruel, inhuman and cold-blooded murder of your wife—you stand upon the verge of the eternal world with the guilt of the murder of your wife and infant offspring upon your head. You who could have no compassion upon your wife—who could not listen to her cries for mercy, if time was given her to utter them; or could take her life in an unsuspecting moment, and so suddenly as to deprive her of an opportunity, even to entreat her husband, to spare her life, cannot expect mercy or pardon from man. You witnessed her dying agonies, inflicted by your own hand, without compassion, and can a faithful administration of the laws admit any compassion which we may personally feel for your suffering, so to operate, as to relieve you? This is not said with a design, to increase your pain, or augment your anguish.—It is intended solely to remove all your reliance upon human aid, or human agency for relief; that you may be enabled without one moment's delay, to apply yourself to those means which may prepare you for your approaching fate, and save your immortal spirit from everlasting woe.—Through humble repentance, and deep contrition for your sins and aggravated crimes—seek for pardon and forgiveness through the atoning blood of a crucified Saviour; seek to obtain mercy through the mediation and blood of Christ, which alone can wash away your guilt, and prepare you to appear before that Judge, to whom all your thoughts and actions are known.—Be entreated so to employ the few remaining moments of your life, that your immortal spirit may not pass from an ignominious death into the regions of everlasting despair.—It only remains to pass upon you the sentence of the law.—Which sentence is,—that you, *Charles Gelter*, be taken to the jail of the County of Northampton, from whence you came, and from thence to the place of execution, and there to be hanged by the neck until you be dead.—And may God have mercy on your soul.

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The Governor has appointed the 4th of October, between one and three o'clock, for the Execution. The prisoner is a German, and speaks the English language imperfectly. He is about 25 years of age. Has belonged to the labouring class of society,



and is apparently possessed of great muscular power. His demeanour on his arraignment, and during his trial, was characterized by indifference, and at times, by effrontery. But when the verdict was rendered, and more particularly when the sentence was passed upon him, he betrayed symptoms of contrition. Since his trial, he has confessed to his counsel that his wife was murdered, and that he knew who murdered her; but denied that he had done it. Subsequently, he has confessed to his mother, his brother-in-law, and a Reverend gentleman of the borough of Easton, that he committed the murder; but declined narrating the particulars. He was executed pursuant to his sentence on the 4th day of October, 1833.

THE END.